CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936 7

No. ~~713~~ 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED FEBRUARY 5, 1937.

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IN SUPREME COURT OF ILLINOIS

Be it remembered, that to-wit, on the 21st day of April, A. D. 1936, the same being one of the days in vacation before the June term of Court aforesaid, complete transcript of proceedings had in the Superior Court of Cook County was filed by Chester C. Dodge et al., appellants, in the office of the Clerk of the Supreme Court of Illinois in case entitled: No. 23661, Chester C. Dodge et al., Appellants, vs. Board of Education of the City of Chicago et al., Appellees, Appeal Superior Court Cook, an Abstract of the Record being in the words and figures as follows, to-wit:

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IN THE

SUPREME COURT OF ILLINOIS

JUNE TERM, A. D. 1936

CHESTER C. DODGE, et al., (Plaintiffs) Appellants, vs. **BOARD OF EDUCATION OF THE CITY OF CHICAGO, a body politic and corporate, et al.,** (Defendants) Appellees.	Appeal from Superior Court, Cook County. Honorable Harry B. Miller, Judge Presiding.

Abstract of Record.

Rec. Page

1 Placita, Superior Court, March Term, 1936.

3 Verified Complaint filed October 9, 1935, by Chester C. Dodge, James E. Armstrong, Wallace H. Whigam, Genevieve Cook, Hiram B. Loomis, Frank L. Morse, Henry F. Keen, Archibald O. Coddington, Helen Toole;

Catherine L. Baird, Mary L. M. Corbett, George B. McClelland, Nellie C. Callahan, Caroline M. Dean, Lillian F. Dougherty, Laura Tierney, Nellie T. Woulfe;

Archibald Paterson, Azile B. Reynolds and Elmer E. Burns

on behalf of themselves and on behalf of other teachers, principals, etc., who retired or attempted to retire from active teaching in the public schools of Chicago before July 11, 1935, similarly situated to plaintiffs and who may choose to and shall join in the cause, against the Board of Education of the City of Chicago, a body politic and corporate; City of Chicago, a municipal corporation, the president and vice-president of the Board of Education and the members thereof, all of whom are named as defendants, the secretary and auditor of the Board of Education, the Mayor of the City of Chicago, the City Treasurer of the City of Chicago and ex-officio School Treasurer of that City, and the Comptroller of the City of Chicago.

Paragraph 1 of the Complaint alleges that all of said plaintiffs have been in the employ of the defendant Board of Education and have been retired from active service of said Board as teachers or principals, either by compulsory retirement by the Board or by voluntary retirement on written request made to the Board, except plaintiffs who, as more specifically shown later in the Complaint, made written requests for voluntary retirement in May or June, 1935, which were not granted by the defendant Board; that each of the plaintiffs retired by compulsory retirement (being the first nine plaintiffs whose names appear above), had served prior to retirement, for a period of twenty years or more as such teacher or principal in the employment of said Board of Education, had attained the age as prescribed by law for compulsory retirement; that the plaintiffs who, as more fully thereafter set forth, voluntarily retired (being the next eight plaintiffs

named above) and those of the plaintiffs who prior to July 1, 1935, in writing requested retirement, which requests were not granted by the Board (being the last three plaintiffs whose names appear above) had at the time of such voluntary retirement or the making of such written request therefor served as teacher or principal, or assistant principal in the City of Chicago in active service of the defendant Board of Education for more than fifteen years prior to the making of such written request and had served in the public schools of the United States for twenty-five years or more prior thereto, and had at the time of such retirement or the making of written request therefor attained the age of sixty-five or more years.

Paragraph 2 describes the defendants and their respective positions and alleges that for twenty years continuously last past, defendant City of Chicago is and has been a city with a population ex-
6 ceeding 500,000; sets forth the positions held by the individual defendants as officers and members of the defendant Board of Education of the City of Chicago and as officers of the City of Chicago, and as to each alleges that such person is and has been such official acting as such.

Paragraph 3 alleges that under the law in force prior to April 20, 1917, defendant Board of Education had power to employ teachers, fix their compensation, and as held by the Supreme Court of this State in the case of *People ex rel. Fursman* v. *City*
7 *of Chicago*, 278 Ill. 318 (decided April 19, 1917) therein referred to and quoted from, could only make contracts with teachers for a period not extending beyond the ensuing school year, and had the

absolute right to decline to employ or re-employ any applicant for any reason whatever or for no reason at all.

Paragraph 4 alleges the enactment of the so-called Otis Amendments, effective April 20, 1917, immediately after the decision of said *Fursman* case and that Section 138 of the School Laws as so amended provided that after a satisfactory service for a three year probationary period, appointments of teachers and principals in the Chicago schools should become permanent, subject to removal for cause as provided by Section 161 of the School Act as so amended; that Section 138 of the School Act as amended by the Otis Amendments remained unchanged until
8 July 11, 1935, when there was written into the said Section a further exception to such permanency of tenure as follows: "subject to termination by compulsory retirement at the age of sixty-five (65) years."

The Otis Amendments comprise Sections 128 to 139, inclusive, and Section 161 of the School Act. (See Exhibit "D" referred to at this point.) (Rec. 74, 81; Abst. 57.)

Paragraph 5 alleges that by an Act effective on
9 its approval by the Governor May 19, 1926, known and in the Complaint herein referred to as the "Miller Act" (complete copy as originally enacted Exhibit "A" attached to Complaint and referred to here) (Rec. 68; Abst. 49) applicable to cities with a population exceeding 250,000 inhabitants, it was provided in Section 1 for the compulsory retirement in the year 1926 of all teachers and principals seventy-five (75) or more years of age; in

the year 1927, of those seventy-four (74) or more years of age; in 1928, of those seventy-three (73) or more years of age; in 1929, of those seventy-two (72) or more years of age, and in 1930 and in each year thereafter, of those seventy (70) or more years of age; that Section 2 of that Act provided "Each person so retired from active service who has served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1500.00) annually and for life from the date of such retirement from money derived from the general tax levy for educational purposes."

Paragraph 6 alleges that defendant Board of Education had approved and recommended for passage an Act very similar to the Miller Act afterwards passed, as appears from the proceedings of the defendant Board for April 8, 1925, of which a copy is attached to Complaint, marked Exhibit "B" (Rec. 69; Abst. 51); that such approval was based upon
10 the recommendation of the Superintendent of the Board of Education and his report setting forth reasons quoted from in this paragraph and fully set forth in said Exhibit "B" in which, among other things, he pointed out that under the proposed Act the plan of compulsory retirement would be "put in effect gradually in order that the persons affected may have notice and be able to make their preparations accordingly."

Paragraph 7 alleges that following the approval of the proposed Miller Act by defendant Board of Education, conferences were held, attended by the
11 representatives of the Board. A revised form of a bill to present to the Legislature was drawn up

by the Law Department of the Board of Education in the form in which it was introduced in the Legislature and the bill was supported in the Legislature by the defendant Board of Education and by representatives of teachers' and principals' organizations; that it was approved and signed by the Governor on May 19, 1926, and on that date went into effect.

Paragraph 8 alleges that the defendant, Board of Education, the Miller Act not having then been approved by the Governor, assumed that that Act had failed to pass, and on December 9, 1925, on recommendations of the Superintendent, adopted a rule referred to as the "Emeritus Rule" to create an "Emeritus Service" to which, under the rule, all members of the teaching force should be assigned on respectively attaining age seventy. Copy of such recommendations of the Superintendent of Schools, as they appear in the Board of Education proceedings attached as Exhibit "C-1" (Rec. 72; Abst. 54) and copy of such proceedings showing resolution adopting and incorporating "Emeritus Rule" attached as Exhibit "C-2" (Rec. 73; Abst. 56).

Paragraph 9 sets forth suit in chancery commenced by Armstrong, Dodge and Hecox on behalf of themselves and others similarly situated, against the City of Chicago, Board of Education and other defend-
12 ants; that in that suit said "Emeritus Rule" was claimed to be invalid under the School Act applicable to the City of Chicago and to the Board of Education of that City, and it was sought to enjoin the enforcement of that rule; that a judgment was entered in the Circuit Court of Cook County, dismissing the bill for want of equity; that on appeal, that

judgment was on February 14, 1928, reversed and the cause remanded by the Appellate Court of Illinois for the First District, which directed the lower court to enter a decree directing the Board of Education to restore the complainants to their positions as principals and teachers in the Chicago public schools as of the date of their removal and that their tenure in such positions be subject to the provisions of the said Miller Act as originally in force May 19, 1926, and as amended June 24, 1927. In its decision in the Armstrong case, the Appellate Court held, 247 Ill. App. 584, that the Board of Education had no authority to "retire, and in effect remove all the principals or teachers, or other employees of a class,
13 solely upon the ground that each individual in that class, because of reaching a certain age, should be presumed to be inefficient", without charges being preferred or an opportunity to be heard, and a copy of the Opinion of the Appellate Court is fully set forth as Exhibit "D" (Rec. 74; Abst. 57).

Paragraph 10 sets forth the amendment of the Miller Act passed by the 1927 Legislature adding Section 3 to the Act, which provided for voluntary retirement of teachers and principals of the public schools of cities the size of Chicago after reaching age sixty-five who have served in the schools of the United States for twenty-five years or more and in the public schools of such city for fifteen years immediately prior to retirement under the Act, and providing that each person so retiring should "be paid annuities for life from moneys derived from the general tax levy for educational purposes" in amount of one thousand dollars ($1,000.00) on retirement at age sixty-five; eleven hundred dollars

$1,100.00) on retirement at age sixty-six; twelve hundred dollars ($1,200.00) at age sixty-seven; thirteen hundred dollars ($1,300.00) at age sixty-eight; fourteen hundred ($1,400.00) at age sixty-nine, and fifteen hundred dollars ($1,500.00) at age seventy and thereafter; copy of the Amending Act of 1927 attached as Exhibit "E" (Rec. 89; Abst 62); that at the same time the title of the Miller Act was also amended to include voluntary retirements as well as compulsory retirements.

14 Paragraph 11 sets forth the 1927 amendment to the Miller Act as originally proposed providing for voluntary retirement at ages sixty to seventy was submitted to the Board of Education of the City of Chicago in a report of the Superintendent of Schools recommending its passage at the meeting of March 9, 1927, which report is quoted from in this paragraph and points out (1) that the Miller Act then in force is a temptation to teachers to remain in service regardless of their health until attaining compulsory retirement age; (5) that laws providing for voluntary retirement at different ages lower than ages of compulsory retirement, are in force in other states; (6) that it would give to teachers who could not on account of health continue in the service until reaching the full age and having completed the twenty years required by the law then in force, just and equitable treatment in allowing to them a smaller annuity; (7) that it would not exhaust the Chicago teachers' pension fund since more teachers in the fifties would be encouraged to continue in the service to get the larger pension offered than teachers in the sixties would retire. A copy of said
15 report showing the above and other reasons is attached as Exhibit "F" (Rec. 90; Abst. 64).

Paragraph 12 sets forth that the defendant Board of Education on May 11, 1927, by unanimous vote adopted a motion to employ a competent firm of actuaries to investigate all phases of said proposed bill for voluntary retirement with a view to presenting the exact amount of money involved and the cost to said Board of Education as shown by the proceedings of the Board for May 11, 1927, a copy of which is attached to Complaint, marked Exhibit "G" (Rec. 92; Abst. 68).

The proceedings of the defendant Board of Education of May 25, 1927 shows that said Board had employed Henry R. Corbett, Actuary, and on that day presented said Actuary's report showing the cost to the defendant Board of the proposed amendment to the Miller Act providing optional retire-
16 ment between the ages of sixty-five and seventy; that the Special Committee on Legislative Matters recommended that the Board endorse the proposed bill with an amendment regarding retirement for physical defects. Said report and said approval by the Board are attached as Exhibit "H" (Rec. 93; Abst. 68).

Said report of said Actuary so presented to said Board on May 25, 1927, was headed "Cost to the Board of Education of the proposed Amendment to the Miller Law". It stated the revised form of the amendment granting $1000 for life on optional retirement at sixty-five, increasing $100 annually for each additional year up to $1500 at age seventy.

Said report was unanimously approved and adopted by the Board.

17 Paragraph 13 recites that after the decision of the Appellate Court in the *Armstrong* case (Ex-

hibit "D"—Rec. 74, 81; Abst. 57) the teachers affected by the "Emeritus Rule" who were still below compulsory retirement age under the Miller Act were restored to their teaching positions and paid their back salaries and those teachers who under the provisions of the Miller Act as in force May 19, 1926, were subject to compulsory retirement were paid back salaries until such date as their compulsory retirement took effect under said Miller Act and their retirement annuities from such times on.

18 Paragraph 14 recites the passage of the Act effective July 1, 1929, amending Section 3 of the Miller Act by eliminating therefrom the provision for voluntary retirement at age seventy and thereafter.

The entire Miller Act (Sections 1, 2 and 3) as amended by the laws of 1929 is set forth in Exhibit "I" attached (Rec. 95; Abst. 71) and in such form remained unchanged until the amendment effective July 11, 1935.

Paragraph 15 sets forth amendment to the Miller Act effective July 11, 1935, copy of which is attached as Exhibit "J" (Rec. 97; Abst. 72). By this Act the title of said Miller Act was amended by omitting the word "voluntary" as qualifying the word "retirement". Sections 1 and 2 were amended and Section 3 was repealed.

19 Section 1 of the Miller Act as so amended by said law of 1935 provided that the Board "as soon as practical after this law becomes effective" should retire all teachers, principals, etc., "who are sixty-five or more years of age" and "thereafter" should

retire all teachers, principals, etc., "on attaining the age of sixty-five years."

Section 2 of said Miller Act as so amended provided for a retirement annuity to be paid annually for life to each teacher, principal, etc., so retired—that is, so retired under and pursuant to the 1st Section of said Miller Act as amended in 1935—the sum of $500.00 and said amendment contained no requirements as to the length of service as a prerequisite to such retirement or the payment of such annuities, the provision theretofore contained in said Section 2 that such teacher, principal, etc., in order to receive the retirement annuity should have served in said schools of Chicago for twenty years or more being wholly omitted from said Miller Act as so amended.

Sections 1 and 2 of said Miller Act as originally enacted remained unchanged from May, 1926, to July, 1935.

Paragraph 16 states that as hereinabove set forth the defendant Board of Education had given careful consideration pending passage to the original Miller Act, and to the amendment of the Miller Act
20 of 1927 by adding Section 3 thereto providing for voluntary retirement at ages sixty-five to seventy, both inclusive, on annuities ranging from $1000 to $1500, both inclusive. Alleges that as to the amendment of 1935, the proceedings of the Board during the period pending the passage of that Act failed to show any consideration by the Board of that Act. That as far as appears in the Board records no investigation was made by it or on its behalf of the effect of the Act either upon the teaching force or as to the financial results which might follow the

reduction of compulsory retirement age, as to persons "thereafter" retiring, to age sixty-five, or
21 from the repealing of the provisions of said Miller Act theretofore in force permitting voluntary retirement, or by reason of the payment of an annuity to persons retiring under the law as amended, of $500 per annum for life instead of annuity provided to be paid under the former law to persons retired under that law. Alleges that when the amending Act of 1935 was before the State Legislature and prior to final vote thereon, agents of defendant Board of Education were in attendance at the sessions of the Legislature advocating and supporting the passage of the amendment, and alleges on information and belief that the amending Act of 1935 was sponsored and supported by the defendant Board of Education.

Paragraph 17 sets forth report of Superintendent of Schools to the Board of Education at its meeting of July 28, 1926, reporting that eighteen persons therein named who according to the records would "on August 1, 1926, be seventy-five or more years of age, and who, on that date, will have served in the public schools of this city for twenty years, shall be retired from active service and shall be paid the sum of $1,500.00 annually for life, provided that they shall be subject to call of the Superintendent of Schools for consultation and advisory service:" that said report, in addition to the names
22 of such persons, gives the date of birth of each, age on August 1, 1926, length of service of each on that date, and was followed by the statement of "Reasons" in which was set forth the fact that the Governor had signed the Miller Act on May 19,

1926, which Act was then set forth in substance. The report also recited that the persons therein named had theretofore been assigned to the "Emeritus Service" and that said report was unanimously approved and adopted by the Board of Education; also a further and similar report at the same meeting by the Superintendent of Schools recommending for compulsory retirement two persons therein named and recommending that such persons be retired from active service and "be paid the sum of $1,500.00 annually for life."

Paragraph 18—Recites a report from the Superintendent of Schools presented to a meeting of the Defendant Board on January 12, 1927, copy of which report is attached as Exhibit "K" (Rec. 98;
23 Abst. 73). Said report recommended that fourteen (14) persons, therein named, who on February 1, 1927 would be 74 or more years of age and would have served in the public schools of Chicago for twenty years should "be retired from active service" and should "be paid the sum of $1500.00 annually for life," subject to the call of the Superintendent for consultation and advisory service. Report gave the respective dates of birth, age on February 1, 1927 and length of service. Following this was a statement of reasons, reading in part as follows: "* * * To each person so retired who served in the public schools of such city for twenty or more years prior to such retirement shall be paid the sum of $1500.00 anually, and for life, from the date of such retirement, from the money derived from the general tax levy for educational purposes;"

On motion of Mr. Coath this report was deferred until the next meeting. At such next meet-

ing, January 26, 1927, said report (Exhibit "K") was adopted by a vote of six to one.

24 Among the persons so retired pursuant to said report was Plaintiff Chester C. Dodge, who until his compulsory transfer to the emeritus service in February, 1926, had been principal of the Hibbard High School. He was born March 16, 1852 and on February 1, 1927, as of which date he was compulsorily retired, had attained the age seventy-four years and ten months, and had been in the service of the Board as teacher and principal for forty-five years, and since his said retirement until September, 1935 received his said retirement annuity as provided for by the Miller Act on February 1, 1927 in the amount of $1500.00 annually.

Paragraph 19. Recites that the Defendant, Board of Education, pursuant to said Section 1 of said Miller Act, in every case in which one or more persons became subject to compulsory retirement, compulsorily retired as of August 1 and February 1, 1928 and of each year thereafter to and including retirements as of February 1, 1935, all teachers, principals and other educational employees upon their respectively attaining the ages at which said Miller Act provided they should be so compulsorily retired.

25 Said defendant Board also paid to each of such teachers, principals and other educational employees so compulsorily retired the annual retirement allowance of $1500.00 for the periods from their respective compulsory retirements to and including July, 1935. Such payments by the defendant Board during the last preceding school year were made in twenty semi-monthly installments of $75.00 each.

Paragraph 20. Eight other original plaintiffs beside plaintiff Dodge have been compulsorily retired from active service.

Plaintiff James E. Armstrong was compulsorily retired by action of said Board at a meeting on January 23, 1929, copy of which proceedings are attached marked Exhibit "L" (Rec. 100; Abst. 75). Plaintiff Armstrong was born November 30, 1855, was retired as of February 1, 1929, having then attained the age of seventy-three years and having served as teacher or principal in said public schools
26 for 44 years, and at the time of such retirement was principal of the Englewood High School.

Plaintiff Archibald O. Coddington was compulsorily retired as of August 1, 1929 by Board action at a meeting of July 10, 1929. At the time of retirement he was 72 years old and had served as teacher and principal in the Chicago public schools for 39 years and was at the time of retirement principal of the Stockton Junior High School.

Plaintiffs Genevieve Cook and Henry F. Keen were compulsorily retired as of February 1, 1930 by action taken by defendant Board at a meeting held January 8, 1930. At the time of said retirement said Genevieve Cook had attained the age of 70 years and had served in the Chicago public schools for 37 years, being at the time of retirement a teacher in the Juvenile Detention Home. Said plaintiff Henry F. Keen was born June 11, 1858, served in the Chicago public schools 33 years and was at the time of retirement a teacher in the Crane Junior College; had served as a teacher in
27 the public schools of Michigan for five years before coming to Chicago; is now 77 years of age, without

employment, supporting his wife, and is almost, if not entirely, dependent for the support of himself and his wife upon the retirement annuity provided by the Miller Act which he has been receiving from the time of his said retirement to and until September, 1935.

Plaintiff Wallace H. Whigam was retired as of February 1, 1931 by action of the Board at a meeting January 14, 1931, and at the date of retirement was 70 years old and had served twenty-six years in the Chicago public schools, and at retirement was a teacher in the Schurz High School.

Plaintiff Hiram B. Loomis was compulsorily retired by defendant Board as of August 1, 1933, on which date he was the principal of the Hyde Park High School and had attained the age of seventy years and been employed as a teacher and principal in the Chicago schools for more than twenty years.

Plaintiff Helen Toole was compulsorily retired by defendant Board as of February 1, 1931, on which date she was more than seventy years old and had served in the public schools of Chicago for more than twenty years.

Plaintiff Frank L. Morse was compulsorily re-
28 tired by defendant Board as of August 1, 1934, at which time he was principal of Harrison Technical High School, had attained the age of more than seventy years and been a teacher and principal in the Chicago public schools for more than forty-six years.

All of said plaintiffs so compulsorily retired from the dates of their several respective retirements, received and had been receiving the retirement an-

nuities so payable to each under said Miller Act in the amount of $1500.00 a year to each, to and until September, 1935.

Paragraph 21 states that from July 1, 1927 to May 15, 1935 the defendant Board of Education, pursuant to Section 3 of the Miller Act as amended in 1927 and in 1929, retired from active service as voluntary retirements all teachers, principals and other educational employees who were qualified thereunder, upon their own written requests, such retirements becoming effective from the dates named in such requests.

The defendant Board of Education also paid to all such teachers, principals and other educational employees so voluntarily retired, the retirement annuities provided for the age at which each such teacher, principal or other educational employee so voluntarily retired, up to and until September, 1935, such payments being made in twenty semi-monthly installments during the last preceding school year,
29 each payment to each such annuitant being in the amount of one-twentieth of his or her said yearly annuity.

Paragraph 22 states that from July 1, 1927 to and including May 15, 1935 the Superintendent of Schools presented to the defendant Board of Education reports recommending that in accordance with their written requests, certain members of the teaching force named in said reports be retired from active service pursuant to the provisions of the Teachers' Retirement Law, effective on the dates specified in said reports, showing as to each, date of birth, dates and length of service in Chicago

public schools and in the United States outside of Chicago. In every instance said defendant Board of Education, at the respective meeting at which such reports were presented, approved and adopted said reports and retired the members of the teaching force, in such reports mentioned, from active service as voluntary retirements effective on the dates specified.

Paragraph 23 names eight plaintiffs who have voluntarily retired under said Section 3 of said Miller Act as originally enacted in 1927, upon the
30 written request of each of said plaintiffs for such voluntary retirement.

Plaintiff George B. McClelland made his written request for voluntary retirement and was so retired as of October 1, 1928 by Board action at a meeting on September 26, 1928. At that time he was a teacher in the Phillips High School, had served in the Chicago public schools for twenty-seven years and was sixty-seven years old. Under said Miller Act he was retired upon an annuity for life of $1200.00 per year, and said annuity has been paid since such retirement to and until September, 1935.

Plaintiff Nellie C. Callahan made written request for voluntary retirement, which was presented at a meeting on December 14, 1932, and said plaintiff was retired as of January 28, 1933. At the time of retirement she was a teacher in the Talcott School and had served in the public schools of Chicago for forty-five years, having attained the age of sixty-five years. From the date of said voluntary re-
31 tirement to and until September, 1935, said plaintiff has received the retirement annuity of $1000.00 a year.

The Superintendent of Schools, in a report presented to the defendant Board on May 15, 1935, recommended "that in accordance with their written requests, the following named members of the teaching force be retired from active service pursuant to the provisions of the Teachers' Retirement Law, effective on the dates specified." Plaintiff Caroline M. Dean was one of those recommended for retirement in said report and requested retirement on May 18, 1935, having served twenty-seven years in the Chicago public schools and having attained the age of sixty-eight years. She was thereupon retired as of May 18, 1935 and thereafter received the retirement annuity at the rate of $1300.00 a year to September, 1935.

Plaintiff Catherine L. Baird made written request for voluntary retirement as of April 27, 1935, at which time she was an elementary teacher in the Von Steuben School, having attained the age of
32 sixty-eight years and taught in the Chicago public schools for thirty-five years. She was voluntarily retired on April 27, 1935, and since that date to and until September, 1935, has received the retirement annuity provided by the Miller Act at the rate of $1300.00 a year.

Plaintiff Laura Tierney was upon written request voluntarily retired in June, 1933, at which time she was an elementary teacher in the Chicago public schools, having taught in such schools for forty-eight years and having attained the age of sixty-seven years. Since said voluntary retirement until September, 1935, said plaintiff has received the retirement annuity of $1200.00 a year.

Plaintiff Nellie T. Woulfe was, upon written request in August, 1933, voluntarily retired at age sixty-five, having taught in the Chicago public schools for thirty-three years and being then a teacher in the Talcott School. Said plaintiff has received her retirement annuity until September, 1935, as provided in the Miller Act, in the amount of $1000.00 a year.

33 Plaintiff Mary L. M. Corbett was upon her written request voluntarily retired February 1, 1935. She was then a high school teacher and had taught in the Chicago public schools for twenty years and in the public schools of the United States outside of Chicago for an additional ten years and had attained the age of sixty-six years. Since her retirement until September, 1935, said Plaintiff has received her retirement annuity as provided for in said Miller Act at the rate of $1100.00 a year.

Plaintiff Lillian F. Dougherty was upon written request voluntarily retired under Section 3 of the Miller Act in June, 1933, at which time she was a teacher in the Talcott School and had taught in the Chicago public schools for forty-four years and had attained the age of sixty-seven years. Since her retirement until September, 1935, said plaintiff received the retirement annuity of $1200.00 a year.

Each of said plaintiffs so voluntarily retired, as in this Paragraph 23 set forth, was, up to the date of such retirement, a teacher or principal in said public schools of Chicago and had within the last twenty years prior thereto served as a teacher or principal or in both such capacities for fifteen years or more.

Paragraph 24 states that it appears from the of-
34 ficial reports of the Board of Education printed and published by authority of said Board, covering the period from July 1, 1927 to and including May 15, 1935, that the practice of the various superintendents of schools and of the defendant Board of Education over that period was uniform as to voluntary retirements pursuant to Section 3 of the Miller Act, and was in accordance with the provisions of said Section 3, and such practice was without exception that a teacher or principal who had served for the length of time required by the Act in the public schools of the United States and in the public schools of said City of Chicago, and who had attained the age of sixty-five or more, as provided in said Section 3, should, upon written request so made to said Board of Education, through said superintendent, thereupon be recommended by said superintendent at the next meeting of said Board for voluntary retirement. Upon such recommendation for voluntary retirement, the practice of said Board over said period of time was uniformly that of granting such voluntary retirement, such action being taken without exception at the meeting at which such recommendation was presented; or if no action could be taken at such meeting for lack of a quorum, then such action was taken at the first meeting thereafter, at which a quorum was present, such voluntary retirement being granted as of the date specified in the written request and at which date such person was so entitled to be voluntarily retired. By such uniform and unvarying practice over said period by said superintendent of schools and by said Board of Education there was adopted by said Board a contemporaneous uniform

and practical administrative construction of said Section 3 of said Miller Act as to voluntary retirements under which the voluntary retirements of teachers and others to whom said Miller Act was applicable, constituted on the part of said Board mere ministerial acts pursuant to recommendations
35 made to said Board by said superintendent of schools, which recommendations were based wholly upon the pre-requisite conditions as prescribed by Section 3 of the Miller Act having been fulfilled, that is, the written request together with the requirements as to age and length of service. Under Section 3 of the Miller Act such written request having been made and the applicants being qualified under the Miller Act for voluntary retirement, the Board of Education had no discretion and by such practice recognized that thereupon the approval of such reports of the Superintendent based upon the proper facts and written requests was in each case a ministerial act of the Board which it was the duty of the Board to at once perform without exception under Section 3 of the Miller Act.

Paragraph 25 states that plaintiff Elmer E. Burns was on May 31, 1935 employed by the defendant Board of Education as a teacher in the Austin High School, and on that day made written request to said Board under Section 3 of the Miller Act as the same was then in full force and effect, for voluntary retirement to take effect June 28, 1935. Said plaintiff had been in active service in
36 said public schools for thirty years, was sixty-seven years old on February 22, 1935.

The Superintendent of Schools thereafter prepared report Number 35263-A entitled "Voluntary

Retirement of Teachers'' in which said Superintendent recommended ''that in accordance with their written requests the following named members of the teaching force be retired from active service, pursuant to the provisions of the Teachers' Retirement Law effective June 28, 1935,'' meaning thereby Section 3 of the Miller Act. Said report named eighty teachers, principals and other educational employees, with information as to each, giving date of birth, length of service in the Chicago public schools and in schools of the United States, and then bore the typewritten signature of Mr. Bogan, Superintendent of Schools, and the approval of the Auditor and was dated June 12, 1935.

The regular meeting of said Board of June 12, 1935 was recessed for lack of a quorum until June 19, 1935, and on June 19, 1935 was adjourned for lack of a quorum. Said report of the Superin-
37 tendent was presented at the next meeting of said Board held June 26, 1935, at which meeting said Board, departing from the uniform practice hereinabove set forth as to taking immediate action upon such reports recommending persons for voluntary retirement, referred said report number 35263-A to the General Committee and Standing Committee of all members of said Board and deferred and postponed action thereon. A mimeographed copy of said report is attached as Exhibit ''M'' (Rec. 101, 2, 3, 4; Abst. 75). A copy of the official report of the proceedings of said Board of said meeting of June 26, 1935, showing a copy of said Superintendent's report and the Board's action thereon, is attached as Exhibit ''N'' (Rec. 105: Abst. 76).

Paragraph 26—Plaintiff Azile B. Reynolds, serving as principal of the Armstrong Elementary School, in June, 1935 made written request, under
38 Section 3 of the Act as then in full force and effect, for voluntary retirement from active service, to take effect June 16, 1935. Said plaintiff was sixty-seven years old May 18, 1935 and had served in the Chicago public schools for thirty-seven and one-half years.

Plaintiff Archibald Paterson, on July 17, 1935, was a teacher in Englewood High School, and on said date made written request to defendant Board under Section 3 of the Miller Act, as the same was then in full force and effect, for voluntary retirement from active service, to take effect June 28, 1935. Said plaintiff had served in the public schools of Chicago for twenty-seven years and had attained the age of sixty-six years.

On June 26, 1935 the Superintendent of Schools presented to Defendant Board report number 35263-N containing a similar recommendation that in accordance with their written requests the persons named "be retired from active service pursuant to the provisions of the Teachers' Retirement Law effective on the date specified herein." Said report contained ninety-two names, including plaintiffs Reynolds and Paterson, and named the effective date for voluntary retirement as June 28, 1935.
39 Departing from its uniform practice hereinbefore set forth, said Board referred said report to the general committee and postponed and deferred action on the same. A mimeographed copy of said report is attached as Exhibit "O-1" (Rec. 107; Abst. 77) and a printed copy of the Board proceedings

showing said report and the Board's action thereon is attached as Exhibit "O-2" (Rec. 111; Abst. 78).

A further report of the Superintendent of Schools Number 35242-D was presented at said meeting of June 26, 1935 and a mimeographed copy is attached as Exhibit "P" (Rec. 113; Abst. 79). Said report was dated June 26, 1935 and set forth that application for voluntary retirement had been presented since the preparation of Reports A-35263 and N-35263 then pending before said Board, and presented the names of three persons who had made written requests for voluntary retirement under Section 3 of the Miller Act as then in full force and effect, together with information regarding such persons showing that they were entitled to such voluntary retirement. Defendant Board, again departing from its former uniform practice as above set forth, referred said report to the General Committee and postponed and deferred action on same. Copy of the Board proceedings is attached as Exhibit "Q" (Rec. 114; Abst. 79).

Paragraph 27 recites that thereafter, on July 24, 1935, defendant Board adopted a report purporting and attempting to compulsorily retire, as at age sixty-five, one hundred seventy-five persons each of whom had prior to June 28, 1935 filed a written request for voluntary retirement under Section 3 of the Miller Act as in force prior to July 11, 1935, and purporting to retire said plaintiffs Burns, Reynolds and Paterson compulsorily under the Miller Act as amended in July, 1935, at an annual retirement annuity of $500.00 to each.

Plaintiffs urge and insist that said action of said Board in failing to adopt and approve said three

reports of the Superintendent of Schools at the regular meeting of June 26, 1935 was arbitrary, illegal and void, and unconstitutional under the Constitutions of the State of Illinois and the United States of America as depriving said plaintiffs Burns, Reynolds and Paterson and all others similarly situated, named in said reports, of vested property rights and of contract and quasi contract rights, and that the action of said defendant Board in subsequently, on July 24, 1935, attempting to compulsorily retire said members of the teaching force, was likewise and upon the same grounds arbitrary, illegal, void and unconstitutional, and constituted the taking of property without due process of law, and
41 an attempt to impair the obligations of contracts.

Paragraph 28 recites that defendant Board continuously since prior to 1925 has printed and published official reports of its proceedings under statutory authority, and describes said reports. Also states that the exhibits attached to this Complaint, recited to be reports of proceedings, are copies of such official reports. Said reports are bound in volumes, and in volume form and in pamphlet form are available to the public at all times, and numerous copies are distributed. The teaching force of Chicago and persons retired therefrom, including the plaintiffs, have access to such reports, which are also distributed to various organizations of teachers and principals and retired teachers and principals. The matters set forth in said reports are therefore matters of common knowledge to the teachers and principals and other educational employees of the public schools of Chicago and retired teachers and principals and other persons interested, and

42 have been matters of common knowledge since the respective dates of the printing and publishing and distribution of such reports.

Paragraph 29—The fiscal year of defendant Board is the calendar year. On January 17, 1935 said Board adopted its "Annual School Budget for 1935" in which said Board appropriated moneys to defray necessary expenses and liabilities of said Board to be paid or incurred during the fiscal year 1935. Section 2 of said budget provides that the amounts thereinafter set forth, or so much thereof as may be authorized by law, as may be needed "are hereby appropriated for educational purposes." Here follows three specific quotations from said budget of an item "Retirements—Miller Law $1,125,000.00." On January 17, 1935 said Board,
43 after adopting said budget, certified that said Board required the levy of a school tax, and made formal demand and direction to the City Council of Chicago to levy said school taxes for the year 1935, and thereafter said City Council duly levied said school taxes for the year 1935.

A copy of said 1935 annual school budget is attached marked Exhibit "R" (Rec. 116; Abst. 80). A copy of said tax levy resolution is attached marked Exhibit "S" (Rec. 121; Abst. 82).

No public moneys can be lawfully expended for school purposes by the defendant School Treasurer
44 except upon a voucher signed by the President or Secretary of the Board and audited by its Auditor and counter-signed by the Mayor and the City Comptroller.

Plaintiffs state upon information and belief that the portion of said amount of $1,125,000.00 still un-

expended and so appropriated in said annual school budget for the payment of retirement annuities under the Miller Act is sufficient to pay for and during the remainder of said fiscal year, being the remainder of the calendar year 1935, the remaining unpaid portions of the annuities provided by the Miller Act, as the same was in full force and effect at the time of their respective compulsory and voluntary retirements, plaintiffs should receive thereunder, including the amounts due under said Miller Act as then in force to plaintiffs who should have been so voluntarily retired under Section 3 as the same was in force before its repeal in July, 1935, and also to pay the same to all other persons situated similarly to all the plaintiffs herein.

Paragraph 30. Alleges on information and belief that there were compulsorily retired under the Miller Act from the date it became effective by the Governor's signature to and until April 30, 1935, 227 persons, of whom 43 had died and 184 were living at that date, and receiving the retirement annuity, $1500 per year each from the dates of retirement to that date, and, except those who have since died received such annuity to and until September, 1935, and are entitled to continue to receive the same for the remainder of their lives.

Alleges on information and belief that during the period Section 3 of the Miller Act was in force to and until April 30, 1935, 830 teachers, principals and other educational employees have been retired thereunder, of whom 112 died prior to April 30, 1935, 718 being still living on that date, and that such persons so voluntarily retiring at each of the different ages are: 291 at age 65, of whom 23 died prior

to April 30, 1935, and the remaining 268, except those who have since died, received up to September 1935, a retirement annuity of $1000 per year and are entitled to continue to receive the same annually for the remainder of their lives; 123 retired at age 66, of whom 20 had died April 30, 1935, leaving 103 then living, who except those who had
46 since died, were until September, 1935 receiving $1100 a year retirement annuity, and are entitled to receive the same during the remainder of their lives; 122 retired at age 67 of whom 9 had died, leaving 113 still living on April 30, 1935, who except those who might have died since, received from dates of retirement until September, 1935, an annuity of $1200 each and are entitled to receive the same for the remainder of their lives; 96 retired at age 68, of whom 15 died prior to April 30, 1935, leaving still living on that date 81, who with the exception of those who might have since died, received retirement annuities until September, 1935 in the amount of $1300 each per year, and are entitled to receive same for the remainder of their lives; 96 retired at age 69 of whom 12 died before April 30, leaving 84 still living, who except those who might have since died, each received retirement annuities of $1400 from the dates of retirement until September, 1935, and are entitled to continue to receive the same for the remainder of their lives; that 102 voluntarily retired at age 70 and over, of whom 33 had died, leaving still living on April 30, 1935, 69 who, with the exception of those
47 who might have since then died, received from the dates of their respective retirements until September, 1935, annuities of $1500 a year and are entitled

under said Miller Act to continue to receive the same for the remainder of their lives.

Plaintiffs allege that it appears from the official printed copies of the records of the defendant Board of Education that in June, 1935, William J. Bogan, then Superintendent of Schools of Chicago, pursuant to Section 3 of the Miller Act, recommended for voluntary retirement not less than 175 persons and that such recommendations were placed before the defendant Board of Education and called to the attention of its members at its regular meeting June 26, 1935; that although each of the 175 persons, as appears from the recommendations of the Superintendent of Schools, as same are set forth in the proceedings of the Board, were then entitled to voluntary retirement, no action was taken by the Board other than to refer such recommendations to the General Committee, and as far as the records of the Board show, the matter was never reported out of that Committee nor any further action taken by that Committee or by the Board; that on the contrary, at the meeting of the Board July 24, 1935, as appears from the official printed records, all of said 175 persons who had so made written requests for voluntary retirement before the 1935 amendment of the Miller Act went into effect and were then eligible thereunder to be so retired and had met all requirements therefor, and who were so recommended
48 by the Superintendent of Schools, were by the Board compulsorily retired or purported to be so compulsorily retired, it being alleged that the Board had no right or authority to retire those 175 persons except under the Miller Act as it was in force and effect before the 1935 amendments became effective

and by voluntary retirements and upon retirement annuities for life as provided in that Act before the 1935 amendments became effective.

Paragraph 31 alleges that prior to August 1, 1935, defendant Board of Education paid annuities to plaintiffs and others similarly situated who retired prior to August, 1934, in twenty installments and to those who retired after August, 1934 in similar installments in the amounts provided for by the Miller Act, as the same was in force and effect prior to the July, 1935 amendments, which payments as to each of such annuitants aggregated for such period the full amounts to which each was entitled, as provided by said Miller Act by reason of their retirements, compulsory or voluntary, at the ages at which they retired. After the amendments of 1935 went into effect, on July 11, 1935, the defendant Board apparently on the assumption that those amendments applied to and reduced the amounts payable as retirement annuities to the plaintiffs and others similarly situated, and regardless of the fact that the annuitants had retired under the Miller Act as it was in force before the 1935 amendments became effective, on September 20, 1935, made a payment to each annuitant and each of the plaintiffs of $25.00 only instead of an amount equal to one-twentieth of such retirement annuity; that if the payment had
49 been based on the amounts theretofore paid, it would have been $75.00 to each annuitant compulsorily retired at age 70 or more, or voluntarily retired at age 70 or more, and as to those voluntarily retired at ages 65, 66, 67, 68 and 69, would have been respectively $50.00, $55.00, $60.00, $65.00 and $70.00; that a true and correct copy of the check or war-

rant for said sum of $25.00 so sent by defendant Board of Education to plaintiff Armstrong, dated September 20, 1935, is attached to the Complaint marked Exhibit "T" (Rec. 122; Abst. 83); that the other checks sent to all annuitants, including all plaintiffs were exactly the same as that sent to plaintiff Armstrong, except the name of annuitant on the face thereof, and the number of the check on the upper right-hand corner; that in all cases, the matter on the back of each check was exactly the same as on the back of said check to Armstrong, of which Exhibit "T" is a copy; that with each of said checks the defendant Board of Education had sent a printed document designated "Order For Next Annuity Payment", which entire document was printed except the letters and figures indicating the date September 27, 1935 thereon, and the date October 4, 1935, thereon and except for a stamped number at the bottom, which number varied on the copies sent to the different annuitants; that a copy of such "Order For Next Annuity Payment" is attached, marked Exhibit "U" (Rec. 123; Abst. 85) and a copy of the return, self-addressed envelope which was also enclosed and sent to each annuitant is attached to the Complaint and marked Exhibit "V" (Rec. 124; Abst. 86); that other than the check, "Order For Next Annuity Payment" and return envelope, no document or statement of any kind was sent to plaintiffs or any of them explaining the reason for the reduction in amount of such payment, or any other statement.

That plaintiffs, after receipt of said checks and the accompanying return envelopes and "Orders For Next Annuity Payment", each sent to defend-

ant Board of Education a statement in writing accepting such payment to apply on what they claimed should be the amount paid them and demanding the payment of the balance of the amount claimed to be due, and that future payments should be in the amounts claimed to be due them under the Miller Act as the same was in force before July 11, 1935, and showing in each case what such balance then due and the amounts thereafter claimed to be due were. A copy of such letter so sent by Plaintiff Dodge is attached to the Complaint as Exhibit "W" (Rec. 125; Abst. 87); that the demand sent by the other plaintiffs is the same as that sent by Plaintiff Dodge, except date and signature of person sending, and the amount shown, the amounts varying in accordance with the annuities which plaintiffs are entitled to receive under the Miller Act in force at the time of their respective retirements, taking into consideration the nature of their retirement and the age of each at date of retire-
51 ment. None of the plaintiffs received any reply to such demand or acknowledgment thereof from defendant Board, or any one acting on its behalf, but each has received since sending in such demand a second check for a second installment of retirement annuity each in the amount of $25 instead of the amounts so received prior to September, 1935, and the amounts which they claim and did claim in said letters sent to the Board of Education should be paid them; that said second checks for $25 were dated October 4, 1935, a copy of the check sent to Plaintiff Armstrong being attached to the Complaint and marked Exhibit "X" (Rec. 126; Abst. 88); that the checks to the other plaintiffs, dated October

4, 1935, were the same as the check to Plaintiff Armstrong except for the name of annuitant, and number.

That by its action in reducing the amounts paid to plaintiffs and others similarly situated from an installment amounting to one-twentieth of amounts from $1500 to $1000, depending upon whether compulsorily or voluntarily retired and at what age; and by failure to make any reply to said demands of plaintiffs for the additional amounts claimed under provisions of the Miller Act in effect at the time of their respective retirements and similar demands of those who had endeavored to voluntarily retire under that Act as to whom the defendant Board of Education attempted to prevent their retirement; and by again, after the making of such demand, sending to the plaintiffs and such others similarly situated a second installment, dated October 4, 1935, of $25.00,
52 the said Defendant has taken the position that such annuitants are only entitled to the retirement allowances as provided in the amendatory law effective July 11, 1935, amending the Miller Act. Plaintiffs contend that the Board should be required to immediately pay to each of them and to others similarly situated the difference between the amount of $50.00, the aggregate of the two checks so paid to each, and an amount equal to one-tenth of the retirement annuities provided for by the Miller Act in force when they retired or should have been retired, being the balance between $50.00 and $150.00 if compulsorily retired or voluntarily retired at age 70 or over, and the difference between the amount of $50.00 and the amounts of $100.00, $110.00, $120.00, $130.00 or $140.00 if they voluntarily retired at ages 65, 66, 67, 68, or 69.

Paragraph 32 alleges on information and belief that there is now in preparation an annual school budget for the year 1936, or at least material and data preliminary to the preparation of such budget in and by which defendant Board, when same is prepared, will appropriate sums of money to defray expenses and liabilities of the Board to be paid or incurred during the fiscal and calendar year 1936; that there will be prepared and adopted by the defendant Board, based upon such school budget for 1936, a resolution similar to that for 1935, as set
53 forth in Paragraph 29 of the Complaint, certifying that said Board requires to be levied upon the equalized assessed valuation of taxable property in the City of Chicago, a school tax for the purposes and amounts set forth in the annual school budget, and resolving that formal demand and direction be made on the City Council of the City of Chicago to levy such tax for 1936, and directing the president and secretary of said Board to present and file copy with said City of such order and direction by certified copy.

Alleges that in view of the position taken by the defendant Board in sending plaintiffs checks in such reduced amounts and ignoring the demands of plaintiffs for the balances claimed by them, the said Board of Education in said annual school budget so in preparation or about to be prepared, which in due course will be adopted early in the year 1936, will not appropriate a sufficient amount for paying the annuities to plaintiffs and others similarly situated, which they should receive pursuant to provisions of the law under which plaintiffs and others have been or should have been retired but will appropriate and

cause to be included in such tax levy and in the demand therefor to the City of Chicago, a sufficient amount to pay for the fiscal year 1936 annuities to retired annuitants in every case of not exceeding $500.00 instead of the larger amounts to which they, as above alleged, are entitled. Plaintiffs contend that said Board should be compelled by the Court to appropriate a sufficient amount to pay annuitants so retired and those who attempted to retire under the Miller Act as same was in force before July 11, 1935, the annuities thereby provided.

54 Paragraph 33—Plaintiffs compulsorily retired ever since retirement have accepted the retirement allowances provided for by the Miller Act and have been at all times and are and have held themselves as subject to the call of the Superintendent of Schools of the City of Chicago for consultation and advisory service and have been and are ready, willing and able to give such consultation and advisory service. Plaintiffs who voluntarily retired made written requests therefor as hereinbefore set forth, and from and after such retirements accepted the retirement allowances as provided in the Miller Act for such plaintiffs, and they and also plaintiffs who made written requests for retirement, which written requests were not acted upon by said Board of Education, have been subject to call for consultation and advisory service and have been and are ready, willing and able to give such consultation and advisory service.

Pursuant to and as the result of their compliance with the prerequisites as to length and terms of service and of such acceptance of the provisions of said

Miller Act, the plaintiffs have become entitled to contractual and quasi contractual rights thereto to receive for life the retirement allowances therein provided for.

Paragraph 34. The amendatory act of 1935 (Exhibit "J" attached to complaint) (Rec. 97; Abst. 72) as appears from the terms and provisions there-
55 of, applies only to teachers, principals and other educational employees in the public schools of Chicago, 65 or more years of age, retired by said Board of Education "as soon as practical after" the amendment became effective and those who should "thereafter" be retired by said Board of Education on attaining age 65; said law as so amended provides only for compulsory retirements and Section 2 thereof provides for payment of $500.00 annually and for life from money derived from general tax levy for educational purposes to each person so retired, meaning and designating thereby each person compulsorily retired at age 65 or over after said amendment became effective. No provision is contained in said Act as to teachers, principals and other educational employees who had theretofore been retired under the law theretofore in force. Rights of such teachers and others theretofore retired and of those who theretofore met all requirements for voluntary retirement and made written requests therefor, including rights of all plaintiffs, were fixed and determined by law in effect at the time of their respective retirements, or at the time when they made written requests for voluntary retirements, which written requests were not acted upon. These rights were preserved to them under Section 4 of the Law of Illinois regarding statutes, which provided in part

(Cahill Ill. Rev. Stat. 1935, Chap. 131 on Statutes, Par. 4):

> "No new laws shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to * * * any right accrued, or claim, arising under the former law, or in any way whatever to affect * * * any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. * * * This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the Act making any new provision upon the same subject or in any other Act."

56 That law has been in full force without change or amendment since 1874.

The retirement allowance provided for by the Miller Act in force prior to July 11, 1935, was and was intended to provide for deferred compensation for services rendered by persons retired from the service after the law went into effect. Ever since the original enactment of Miller Act in 1926, and prior thereto, the school law of Illinois has made provisions for pensions payable to retired teachers in the City of Chicago from a pension fund therein provided for. By the Miller Act, as originally enacted and thereafter amended, it has been provided that nothing therein contained should impair or prejudice rights of teachers or principals so retired to annuities under such other provisions concerning such teachers' fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of Illinois, and further pro-

vided that such Miller Act should not repeal or modify any other statutory provision.

In 1931 the law concerning teachers' pension funds and teachers' pension and retirement funds referred to in the Miller Act was modified and amended by adding to Section 157 of the School Act (Cahill Ill. Rev. Stat. 1931, Chap. 122—Schools, Par. 183) being one of the sections relating to pensions, a proviso referring to the Miller Act and providing that any teacher "may receive in addition to the pension under this Act any compensation or annuity provided to be paid by the Board of Education of such City after retirement from active service under any compulsory or voluntary retirement law now or here-
57 after in force." The only compulsory or voluntary retirement law then or thereafter in force applicable to cities having a population of 250,000 and Boards of Education in such cities, was said Miller Act and in said quoted proviso added by the 1931 amendment, the annuity provided for in the Miller Act was referred to and designated and defined as a compensation or annuity provided to be paid by the Board of Education after retirement from active service.

The said law as to teachers' pension fund or teachers' pension and retirement fund to which that proviso was added by the 1931 amendments was a law applicable to cities having a population exceeding 500,000 inhabitants, and therefore to Chicago only, that being the only city having a population exceeding 500,000, and the Miller Act applied to cities having a population of more than 250,000 and therefore to the City of Chicago.

Should it be attempted to construe the amendatory act of 1935 amending the Miller Act as retroactive and as applicable to plaintiffs herein and others similarly situated who have voluntarily retired or been compulsorily retired before the amendatory act of 1935 went into effect, or to those plaintiffs and others similarly situated who having met all requirements under such former law for such voluntary retirement had made written requests therefor while such former law was still in effect, which written requests had not been acted upon, such construction of said law resulting in a reduction of the retirement allowances of all persons to $500.00 each from amounts which the law in effect before 1935 amendments provided they should receive, then and in that case said amendments to said Miller Act as so construed would be in violation of Section 2 of Article 2 and of Section 14 of Article 2 of the Illinois Constitution and of the Fifth Amendment to and of Section 10 of Article 1 (first paragraph) of the
58 United States Constitution and be invalid and unconstitutional (1) as an attempt to take away vested rights and to take property without due process of law, and (2) as an attempt to impair obligations of contracts. As herein set forth, under the laws and rules applying to statutory construction, it is submitted and contended by plaintiffs that the language of said amendment of 1935 does not support or justify any such retroactive or retrospective construction.

Paragraph 35. Forasmuch, therefore, as plaintiffs are without remedy in the premises in a court of law and have an adequate remedy herein and can have adequate relief only in a court of equity, and in

order to avoid a multiplicity of actions and to the end that defendants be required to answer the matters and things in the complaint alleged, but not under oath (answer under oath of each defendant being expressly waived) plaintiffs therefore pray

(a) That defendant Board of Education of the City of Chicago and defendants, the members thereof, be directed and ordered to rescind the action taken by said Board on June 26, 1935, referring to General Committee of the Board said reports of the Superintendent of Schools of the City of Chicago referred to in the proceedings of said Board as Nos. 35263-A, 35263-N and 35242-D, recommending for voluntary retirement 175 teachers, principals and other educational employees who had before June 26, 1935 made written requests for voluntary retirement and forwarded same to said Superintendent of Schools, including those plaintiffs who, as above set forth, made such written requests, which written requests were never granted or acted upon;

(b) That defendant Board of Education and de-
59 fendants, the members thereof, be directed and ordered to rescind action taken by defendant Board on July 24, 1935, in attempting or pretending to retire compulsorily the plaintiffs Burns, Reynolds and Paterson who prior to June 26, 1935, made written requests for such voluntary retirement and delivered same to said Superintendent of Schools, said three plaintiffs being each named in one of said reports of the Superintendent of Schools so referred to in the proceedings of said defendant Board as Nos. 35263-A and 35263-N;

(c) That defendant Board and defendants, the members thereof, be directed and ordered to take

such necessary action upon said reports of the Superintendent of Schools so designated as Nos. 35263-A, 35263-N and 35242-D, as shall result in retiring upon their written requests those plaintiffs herein who had prior to June 26, 1935, made written requests for voluntary retirement through said Superintendent and as shall, as of a date in June, 1935, subsequent in each case to said written request so made and not later than June 28, 1935, approve of and accept such written requests and recognize the voluntary retirement of said three plaintiffs and each of them, pursuant to Section 3 of the Miller Act as same was in force and effect prior to July 11, 1935;

(d) That the Court forthwith grant a provisional or preliminary writ of injunction directed to defendant Board of Education of the City of Chicago and defendants, the several members thereof, their attorneys, solicitors, agents, servants, officers, representatives, and employees restraining them from further enforcing, carrying out or attempting to carry out or enforce said attempted compulsory retirements as of July 24, 1935, of plaintiffs Burns,
60 Reynolds and Paterson, who made said written requests prior to June 26, 1935, which requests were not acted upon by said defendant Board, and compelling said defendant Board and the members thereof to retire said three plaintiffs by voluntary retirement pursuant to provisions of Miller Act in force prior to July 11, 1935, and to pay or cause to be paid to each of plaintiffs, Burns, Reynolds and Paterson respectively the sums of $1200, $1200 and $1100 per annum as retirement allowances under said Miller Act for life, and that on final hearing, said injunction and order be made final;

(e) That defendant Board of Education and defendant McCahey, president thereof, and Landmesser, Secretary thereof, and Edward J. Kelly, Mayor of the City of Chicago, and Robert Upham, Comptroller of said City, and Gustave A. Brand, Treasurer of the City of Chicago and *ex officio* School Treasurer thereof, be directed, ordered and decreed to immediately issue, sign and countersign warrants to the Treasurer of said City, each for the sum of $100 payable to the order of each of several plaintiffs Dodge, Armstrong, Whigam, Cook, Loomis, Morse, Keen, Coddington and Toole, who have been as above set forth severally compulsorily retired under Sections 1 and 2 of the Miller Act as in force and effect prior to July 11, 1935, being for the balance due to each on the two $75.00 payments payable to each on September 20 and October 4, 1935,
61 the aggregate amount of $50.00 only having been paid to each of said plaintiffs by payments made to them on said dates;

(f) That said defendant Board and said defendant McCahey, president thereof, defendant Landmesser, secretary thereof, defendant Kelly, Mayor of said City of Chicago, defendant Upham, Comptroller of said City and defendant Brand, Treasurer of said City and *ex officio* School Treasurer, be ordered, directed and decreed to immediately issue, sign and countersign warrants to the following plaintiffs for amounts as follows: Catherine L. Baird, $80.00; Mary L. M. Corbett, $60.00; George B. McClelland, $70.00; Nellie C. Callahan, $50.00; Caroline M. Dean, $80.00; Lillian F. Dougherty, $70.00; Laura Tierney, $70.00; Nellie T. Woulfe, $50.00; being for the balance due on the aggregate amount of the two pay-

ments due to each on September 20, and October 4, 1935, the aggregate amount of $50.00 only having been paid to each of them by payments made to them on said dates;

(g) That defendant Board of Education and defendant McCahey, president thereof, and defendant Landmesser, secretary thereof, and defendant Kelly, Mayor of Chicago, defendant Upham, Comptroller of Chicago and defendant Brand, Treasurer of Chicago and *ex officio* School Treasurer of said City of Chicago, be ordered, directed and decreed to immediately issue, sign and countersign warrants payable to plaintiffs Paterson, Burns and Reynolds for the following amounts: To plaintiff Paterson, $60.00;
62 to plaintiff Reynolds $70.00 and to plaintiff Burns $70.00, for balance due each on the aggregate amount of the two payments due each on September 20 and October 4, 1935, the aggregate amount of $50.00 only having been paid plaintiffs on said dates.

(h) That defendant Board of Education, defendant McCahey, president thereof, defendant Landmesser, secretary therefor, defendant Kelly, Mayor of said City of Chicago, defendant Upham, Comptroller of said City and defendant Brand, treasurer of said City and *ex officio* School Treasurer, be directed, ordered and decreed to issue, sign and countersign warrants directed to the Treasurer of said City twice monthly during October, November and December, 1935, to each of the plaintiffs herein in the amount of one-twentieth of the retirement allowances which it was provided by the Miller Act, as same was in force and effect before July 11, 1935, should be paid to each of them, said amounts of each

such installment so due to each plaintiff being as follows:

To Dodge, Armstrong, Whigam, Cook, Loomis, Morse, Keen, Coddington and Toole, $75.00; To Baird, $65.00; Corbett, $55.00; McClelland, $60.00; Callahan, $50.00; Dean, $65.00; Dougherty, $60.00; Tierney, $60.00; Woulfe, $50.00; Paterson, $55.00; Reynolds, $60.00; and Burns $60.00;

(i) That defendant Board of Education and defendants, the members thereof, be ordered, directed and decreed in preparing and adopting the annual school budget for the year 1936, to include therein an appropriation and to therein appropriate (for the purposes of paying retirement allowances under said Miller Act to all persons who, including plain-
63 tiffs herein, have been compulsorily retired prior to July 11, 1935 under said Act and all persons who have been voluntarily retired prior to July 11, 1935, and all persons who, prior to July 11, 1935, had met all requirements for voluntary retirement as provided by said Act as in force and effect before July 11, 1935, and had made written requests for such voluntary retirement, which written requests were not passed on or approved by the defendant Board of Education and whom said defendant Board purported or attempted to retire after July 11, 1935, compulsorily under the law as amended, effective July 11, 1935) a sufficient amount to pay all such persons, including plaintiffs, retirement annuities during the year 1936 as provided by said Miller Act so in force before said amendments to said Act of 1935 became effective on July 11, 1935; that is, an amount sufficient to pay to such annuitants so compulsorily retired the amount during said year

of $1500.00 a year each, and to annuitants who voluntarily so retired the amounts applicable under said Act to age at date of retirement, being $1000 to those 65 years of age at date of retirement; $1100.00 to those 66 at date of retirement; $1200.00 to those 67 at date of retirement; $1300.00 to those 68 at date of retirement; $1400.00 to those 69 at date of retirement, and $1500.00 to those 70 years of age and over at date of retirement;

(j) That said defendant Board and defendants, the members of said Board, be ordered, directed and decreed to adopt resolutions in proper form, based upon such annual school budget, including sufficient amounts to pay such retirement allowances for 1936, to all annuitants as in the foregoing paragraphs set forth, certifying to said City of Chicago that said
64 Board of Education requires to be levied for the year 1936 upon equalized assessed value of taxable property in said City a sufficient tax for educational and other purposes, including therein for educational purposes an amount sufficient to pay such amounts to such annuitants and to cause formal demand and direction to be made upon the City Council of said City of Chicago to levy such school taxes based thereon and to authorize and direct the president and secretary of said Board to present and file with said City Council such order and demand by verified copy;

(k) That said defendant Board and said defendants, the members of said Board and said defendant City of Chicago and its officers be ordered, directed and decreed in the future to do all things necessary, make all necessary tax appropriations and tax levies, to sign, countersign and issue warrants

for the payments to said plaintiffs Dodge, Armstrong, Whigam, Cook, Loomis, Morse, Keen, Coddington and Toole of $1500.00 each year for life, and to the following plaintiffs each year for life the following amounts: Baird, $1300.00; Corbett, $1100.00; McClelland, $1200.00; Callahan, $1000.00; Dean, $1300.00; Dougherty, $1200.00; Tierney, $1200.00; Woulfe, $1000.00; Paterson, $1100.00; Reynolds, $1200.00; and Burns, $1200.00;

65 (l) Prays that the Court forthwith grant a provisional or preliminary writ of injunction directed to defendant Board of Education, to defendants, the several members thereof and to each of them, to defendants, the secretary and auditor of the Board of Education and each of them, to defendant City of Chicago, to defendant Mayor thereof, to defendant City Treasurer and *ex officio* School Treasurer, to defendant Comptroller of said City, and each of them, and to the attorneys, solicitors, agents, servants, officers, representatives and employees of defendant Board and of defendant City of Chicago, enjoining and restraining them and each of them from reducing the amount of such annuities for life to the several plaintiffs herein from the several amounts per annum set forth as so due each of them in the last preceding paragraph, or from attempting to so reduce the same, and from interfering with or preventing in any way the payment to each of said plaintiffs of such amount annually and for life to each; and further pray that on final hearing, such injunction and order be made final;

66 (m) That the Court retain jurisdiction of the cause for further action, as may or shall be desirable or necessary for fully carrying out the orders

of court, and to give complete remedy in the premises to plaintiffs herein;

(n) For such other and further relief of a similar nature or different relief as equity may require or to your Honor shall seem meet.

Signatures of plaintiffs and of Allan J. Carter, their attorney.

Affidavit of Chester C. Dodge, James E. Armstrong, Genevieve Cook, Mary L. M. Corbett, George B. McClelland, Nellie C. Callahan, Archibald O. Coddington and Frank L. Morse, on their respective oaths, that they are plaintiffs, that they have read or heard read the Complaint on their behalf, are familiar with the contents thereof and matters
67 and things therein set forth and that said Complaint and contents thereof and matters and things therein are true in substance and in fact, except as to such matters and things as are therein stated to be on information and belief, and as to such matters and things and allegations so in said Complaint stated to be on information and belief, they and each of them are so informed and believe same to be true.

Signed by said Dodge, Armstrong, Cook, Corbett, McClelland, Callahan, Coddington and Morse, sworn to by them on October 4, 1935.

EXHIBITS ATTACHED TO COMPLAINT

68 EXHIBIT "A".

(Herein set forth in full)

ORIGINAL MILLER ACT, EFFECTIVE May 19, 1926.

An Act to provide for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents, and the payment of retirement annuities.

Be it enacted by the People of the State of Illinois represented in the general assembly:

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city shall retire from active service on February 1 and August 1 of each year, all teachers, principals, district superintendents, and assistant superintendents in the public schools of such city in accordance with the following schedule:

(a) In the year 1926 all teachers, principals, district superintendents, and assistant superintendents seventy-five or more years of age, shall be retired from active service.

(b) In the year 1927 all teachers, principals, district superintendents, and assistant superintendents seventy-four or more years of age, shall be retired from active service.

(c) In the year 1928 all teachers, principals, district superintendents, and assistant superintendents

seventy-three or more years of age, shall be retired from active service.

(d) In the year 1929 all teachers, principals, district superintendents, and assistant superintendents seventy-two or more years of age, shall be retired from active service.

(e) In the year 1930 and in each and every year thereafter, all teachers, principals, district superintendents, and assistant superintendents, seventy or more years of age, shall be retired from active service.

Sec. 2. Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes: Provided, that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: And, provided further, that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State; and shall not repeal or modify any other such statutory provisions.

69 EXHIBIT "B".

RECOMMENDATION OF SUPERINTENDENT OF SCHOOLS.

(from official printed copy of proceedings of Board of Education of City of Chicago.)

April 8 972 1925
(11263)

COMPULSORY RETIREMENT OF EMPLOYES IN EDUCATION DEPARTMENT

I respectfully recommend that the Board of Education approve of the proposition to secure from the General Assembly of the State of Illinois the enactment of a law authorizing the Board of Education to provide for the compulsory retirement of employes in the Education Department upon reaching the age of 70 years, and also to pay annually to each such person during the remainder of his life the sum of $1,500.

Reasons: Under the provisions of the Teachers' Tenure of Office Act, principals and teachers in Chicago have been continued in service many years past the age when they can reasonably be expected to render the most efficient service. Consideration of the fact that they have devoted all the years of their adult life to public service, and also that in the past no policy of compulsory retirement age has been established, has influenced the executive officials and the Board of Education to retain in service elderly principals and teachers who do not voluntarily request retirement under the provisions of the Teachers' Pension and Retirement Fund.

Experience in various lines of human endeavor have demonstrated that there is an age beyond which it is impossible to retain the physical and mental vigor necessary to the performance of efficient, progressively improving service. This fact has been recognized in the management of most enterprises. It is more generally recognized in other lines than in the teaching profession; but even in teaching many boards of education throughout the country accept the principle and conduct their affairs accordingly.

There are now in the service of the Board of Education many persons who have passed the age of 70 years. Infirmity has overtaken some of these, and it would seem that considerations of justice to the children of the schools require that they be replaced by younger persons.

Attached hereto is a copy of a tentative bill for an act by the General Assembly, embodying the plan above recommended. It is provided that this plan shall be put in effect gradually in order that persons affected may have notice and be able to make their preparations accordingly.

A Bill. For An Act to provide for the compulsory retirement of teachers and the payment of retirement annuities.

Be it enacted by the people of the State of Illinois, represented in the General Assembly.

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the Board of Education shall provide for the compulsory retirement on February 1 and August 1 of each year

of all teachers, principals, district superintendents, assistant superintendents, members of the board of examiners, and the superintendent of schools in the public schools of such city, who, during the half year immediately preceding, have reached the age of 70 years. Each person so retired who has served in the public schools of such city for twenty
70 or more years shall be paid a service annuity of $1,500 annually and for life from the money derived from the general tax levy for educational purposes.

Section 2. Nothing in this Act shall in any way impair or prejudice any rights a person retired in accordance with the provisions of this Act may be entitled to under the provisions of any teachers' pension fund, or teachers' pension and retirement fund.

Section 3. The provisions of this Act shall become effective in accordance with the following schedule: In 1926 all persons at that time 75 or more years of age coming under the provisions of this Act shall be retired; in 1927, all persons at that time 74 years or more of age, coming under the provisions of this Act shall be retired; in 1928, all persons at that time 73 or more years of age coming under the provisions of this Act shall be retired; in 1929, all persons at that time 72 or more years of age coming under the provisions of this Act shall be retired; in 1930, the full provisions of this Act shall become effective.

71 (April 8, 1925 Page 796)

The foregoing Report No. 11263 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, nine yeas, no nays.

72 EXHIBIT "C-1".

RECOMENDATION OF SUPERINTENDENT OF SCHOOLS.

(from official printed copy of proceedings of Board of Education of City of Chicago)

November 25 469 1925

(13165) "Amendment to the Rules—Referred.

I beg leave to recommend the following amendment to the rules for your consideration:

EMERITUS SERVICE"

Recites that the laws of the State provide for appointments of teachers and principals after probationary period of three years becoming permanent subject to rules of Board of Education concerning conduct and efficiency and subject to removal for cause.

Recites that the laws provide that said Board shall exercise all powers "requisite for the proper maintenance and fullest development of an efficient public school system." Recites that it is generally recognized that at about age 70 there is usually a letting down of vigor and mental initiative and ambition.

Recites that superintendents, examiners, assistant superintendents, district superintendents, supervisors, directors, principals, teachers, etc., who have faithfully and efficiently served for years and have acquired experience are of continued value to schools.

"Be it Resolved that the rules of the Board of Education of the City of Chicago be and the same

are hereby amended by adding a new article to be known as Article 7A, Chapter IV, and to read as follows:"

Section 1 provides that there is thereby created a branch of the educational service to be known as Emeritus Service to which all members of teaching force, including teachers, principals, directors, superintendents and examiners, except as hereinabove provided, shall be assigned upon respectively attaining age 70. Hereafter no member of teaching force shall be continued in class room or supervisory duties who shall be more than 70 years of age;

Section 2 provides that it should be the duty of the Superintendent on January 1 and July 1 in each year, or as soon thereafter as possible to report to the Board in writing names of persons of teaching force who have or will have attained age 70 on February 1 or August 1 next ensuing and that he shall recommend (except in cases where charges should be preferred) the retirement of such persons from regular class room or supervisory service and their assignment to Emeritus Service to be subject to the call of the Superintendent of Schools or the Board for consultation, advice and such other service as may from time to time be required.

Section 3—Persons so transferred to Emeritus Service to be paid annually during the continuance thereof a sum equal to one-half of the average salary received by such person during the last ten years preceding transfer, but no person so transferred to receive less than $1500.00 nor more than $2500.00. Referred to Committees on Rules and Finance for consideration in joint meeting.

73 EXHIBIT "C-2."

(from official printed copy of proceedings of Board of Education of City of Chicago)

December 9, 561 1925

* * *

JOINT COMMITTEE.

Mr. Byrne, Chairman of the Joint Committee on Finance and Rules reported the following:

(13398) Amendment to the Rules—Emeritus Service—Concur

Joint Committee on Finance and Rules reported careful consideration to Report 13165 referred to it, which recommends amendment to the rules creating a branch of the educational service of the Board to be known as "Emeritus Service" and recommends concurrence therein.

In connection with said Report, Mr. Byrne presented an amendment as follows:

(A-13398) Section 1 as amended excluded the Superintendent of Schools and added a proviso that such assignment should be made only in cases where the person has been in active and continuous service in the public schools of the City of Chicago "for at least twenty years prior to such amendment."

The adoption of the amendment was moved and seconded and passed on roll call by a vote of 8 to 1. The adoption of the report as amended was moved and seconded and passed on roll call by a vote of 8 to 1.

74 EXHIBIT "D".

(Copy of Opinion of Appellate Court, First District, filed **Feb.28.1928** in the following case:)

No. 32497

JAMES E. ARMSTRONG, ET AL.,
Appellants,
vs.
CITY OF CHICAGO,
BOARD OF EDUCATION OF
CITY OF CHICAGO, ET AL.,
Appellees.
} Appeal from Circuit Court of Cook County.

MR. JUSTICE GRIDLEY DELIVERED OPINION OF THE COURT:

Appeal from decree of Circuit Court of Cook County entered October 8, 1926, wherein the Court after hearing, dismissed complainants' original bill for want of equity. Complainants sought to enjoin the enforcement of certain rules adopted by the Board of Education known as "Emeritus Service" wherein it was provided *inter alia* "Hereafter no member of the teaching force shall be continued in class room or supervisory duties who shall be more than seventy years of age."

At the time of filing the bill two complainants were 70 and one 73 years old. Two had served as principals or teachers for more than 20 years and one as a teacher for nearly that long. All were performing their duties.

An appeal was taken to the Supreme Court and transferred to the Appellate Court. The Supreme

Court held it had no jurisdiction on the appeal. *Armstrong* v. *City of Chicago,* 328 Ill. 427.

75 Bill filed on behalf of all teachers and principals who desire to join. Alleges that each complainant is resident, voter and taxpayer, and their positions in the Chicago schools; that each has complied with the rules of the Board concerning conduct and efficiency and there is no cause for removal; no charges have been made, and under the statutes their status "should be determined by merit only" and that each of their appointments "has become permanent" subject to rules of Board concerning conduct and efficiency and subject to removal for cause in the manner provided by Section 161 of the Schools Act.

The Opinion then sets forth the resolution containing the rule as to Emeritus Service as amended (See Exhibits "C-1" and "C-2", Rec. 72, 73; Abst. 54, 56).

76 Bill alleges that the Board has announced that it will pay to teachers to be placed in such Emeritus Service $65,000.00 for the current year; that the Board has concurred in a report naming 74 principals and teachers, including complainants, who will be placed in such service on February 1 and has announced that it will select persons to fill the positions of the persons so named.

77 Bill alleges notice to complainants and other persons of their retirement to Emeritus Service and alleges that the proposed action will cause unlawful and unconstitutional diversion of money raised by taxes; will deprive complainants of property without due process of law; alleges that the rules are arbitrary, unreasonable and void and in violation of the State

and Federal Constitutions, and that their enforcement will result in a multiplicity of suits and that complainants have no adequate remedy at law.

Bill prays for an injunction restraining the defendants from enforcing or attempting to enforce the rules as against the complainants and from transferring them to Emeritus Service.

The Opinion then refers to the supplemental bill filed on behalf of complainants seeking an injunction directing the Board of Education and the Superintendent of Schools to restore complainants to their former status and to enjoin them from thereafter retiring complainants and to enjoin the Board
78 from interfering with the complainants in their positions and the performance of their duties as held by them at the time of filing their original bill. The Opinion then refers to the proceedings had in the lower court and to the testimony and to the evidence as to complainants having been removed from their class room or supervisory duties and those positions having been taken by others, and that complainants had not been requested to do much in
79 connection with their school work since their transfer to Emeritus Service. The Court then refers to the passage of the "Miller Act" by both Houses of the Legislature before adjournment in June, 1925, and that it was not signed and did not become a law until May, 1926; that while the Act was pending
80 before the Legislature, the Board of Education was active in urging its passage and that the Board, believing that the Act had failed to become a law, passed the rules in question in December, 1925.

The provisions of the Miller Act applicable to Cities with more than 250,000 inhabitants and pro-

viding for compulsory retirement from active service of teachers, principals, etc., in the public schools of such cities in accordance with the schedule of years and ages therein set forth (See Exhibit "A", Rec. 68; Abst. 49) and then quotes in full sec-
81 tion 2 of the Miller Act (See Exhibit "A"); that the Act was amended by adding Section 3 effective July, 1927, to provide for voluntary retirement upon written request of teachers, principals, etc., 65 or more years of age and the payment of annuities for life from the moneys derived from the general tax levy for educational purposes.

Sets forth the amendments of the School Act known as the Otis Amendments amending in 1917 Sections 128 to 139 and 161, which went into effect on April 20, 1917, and the decision of the Supreme Court April 19, 1917, of the case of *People ex rel.*
82 *Fursman* v. *City of Chicago,* 278 Ill. 318, quoting from that decision at page 23 partly as follows: "The board has no power to make contracts for the employment of teachers to extend beyond the ensuing year. * * * The board has the absolute right to decline to employ or to re-employ any applicant for any reason whatever or for no reason at all. * * *"

It was then held in the opinion of the Appellate Court that in passing the Otis Amendments the intention of the Legislature was to secure for teachers and principals in cities of a population of 100,000 or more "a permanency in tenure of their positions and that they be not required to make yearly contracts with boards of education in such cities."

83 Then quotes Sections 130, 131, 137, 138, 139 and 161 of the School Law as amended.

84 Holds that under said Section 138 as amended, complainants' positions as principals or teachers in the schools had become permanent subject (1) "to the rules of the board concerning conduct and efficiency" and (2) "to removal for cause in the manner provided by Section 161 of this Act". That counsel for defendants admitted that the only fact militating against the retention of their positions by the complainants was that they were 70 or more years of age and if their assignment to Emeritus Service be considered as a removal (as distinguished from a transfer) the Board of Education did not have sufficient statutory authority to so assign com-
85 plainants, but contended that the complainants were only transferred to "another class of service in the educational department".

Takes up counsel's contention that the permanency of service provided for in Section 138 shall be "subject to the rules of the board concerning conduct and efficiency" and that the amended Sec-
86 tion 139 of the School Law provided that the board should exercise powers requisite or proper for the maintenance and fullest development of an efficient public school system. Takes up counsel's contention that under these provisions the Board of Education had authority to pass the rules in question and to retire complainants and others as a class after reaching 70 years of age. As to this contention, the Court holds that the words "concerning conduct and efficiency" as used clearly refer to the conduct and efficiency of an individual principal or teacher; but that it was not the legislative intent that the Board might retire and in effect remove
87 all the principals or teachers "of a class, solely

upon the ground that each individual in that class, because of reaching a certain age, should be presumed to be inefficient, without charges being preferred as to the inefficiency of each individual, * * *". Concludes that the Circuit Court erred in entering decree dismissing the bills for want of equity, reverses the decree and remands to the Circuit Court "with directions that it enter a decree directing the Board of Education to restore complainants to their respective positions, as principals and teachers in the Chicago public schools, as of the date of their said retirement or removal therefrom * * * but that their tenure in said positions be subject to the provisions of said 'Miller Act,' as originally in force on May 19, 1926, and as amended on June 24, 1927."

In which opinion BARNES, P. J., and SCANLAN, J., CONCUR.

89 EXHIBIT "E".

AMENDMENT OF 1927 TO THE MILLER ACT.

An Act to add section 3 to and to amend the title of "An act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. Section 3 is added to "An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and the payment of retirement annuities," approved May 19, 1926, the added section to read as follows:

SECTION 3. All teachers, principals, district superintendents, and assistant superintendents who have served in the public schools of the United States for twenty-five years or more and who have served in the public schools of such city for 15 years immediately prior to retirement under this Act and who are 65 or more years of age and who have not reached the age of compulsory retirement as provided in sections one and two of the last mentioned Act to which this section is added, shall upon their own request be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes. Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65—Ten hundred dollars ($1,000)
Age 66—Eleven hundred dollars ($1,100)
Age 67—Twelve hundred dollars ($1,200)
Age 68—Thirteen hundred dollars ($1,300)
Age 69—Fourteen hundred dollars ($1,400)
Age 70—And thereafter fifteen hundred dollars ($1,500)

And provided that at the age of 65 and any year of age thereafter, the board of education of such city may require a physical or a mental examination of any such teacher, principal, district superintendent or assistant superintendent upon the request of the superintendent of schools of such city and if any such teacher, principal, district superintendent or assistant superintendent be found incapacitated for service after trial as already or hereafter provided by law he shall be retired at the annuity above provided for that age of voluntary retirement.

And provided further, that all such teachers, principals, district superintendents, and assistant superintendents shall be subject to the same conditions as to advisory service as provided for in section 2 of said last mentioned Act to which this Section is added. Nothing contained in this section or in said last mentioned Act to which this section is added shall in any way impair or prejudice any right of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund or teachers' pension and retirement fund established in accordance with the provisions of any statute of this State, and the payment to be made under this section or the Act to which it is added shall be in addition to any such annuity.

SECTION 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendments, and the payment of retirement annuities." Approved June 24, 1927.

90 EXHIBIT "F".

March 9 (16727) 1262 1927

Retirement Law—Amend—Referred

Superintendent's report to Board of Education concerning the proposed Act to add Section 3 to and to amend the title of "An Act to Provide for the Compulsory Retirement of Teachers," etc., approved May 19, 1926.

He recommends an examination of the Bill and the addressing to the chairman of the committee of education of the House of Representatives and Senate letters commending such features of the Bill as conduce to the improvement of the Chicago public-school service.

Reasons: (1) The retirement provisions of the Miller Act are a temptation to teachers over 60 who have failed in health to continue in the service much longer than heretofore. Average age of resignation heretofore 54.

(2) The amendment will give the schools relief from incapacitated teachers over sixty years of age, without additional cost, as new teachers taking the place of those retiring will begin at lower steps of salary schedule. Therefore, salary of new teachers and pension under amendment would be less than salary of old teacher retiring under amendment.

(3) Taking into consideration total amounts paid at $1500.00 per year for 8½ years, the expectancy at age 70, with $700.00 a year for 14 years, the expectancy at age 60, the Board would save nearly $3,000.00 on teacher retired at age 60, as compared with what they would pay the same teacher should she remain in service until age 70 and then retire. This would not include her salary for teaching for ten years, but simply compares the two pensions.

(4) Exact comparison of all factors is impossible. Takes up then different contingencies and possibilities, and concludes every method adopted for comparison, however, "shows that the cost of the substitute teacher plus the pension paid to the

teacher retired between 60 and 70 years old will be about equal to what the Board would have to pay to the teacher thus retired if she had remained in the service at her full salary up to the age of superannuation."

91 (5) States and one large city that have state superannuation laws have a period of from five to ten years of voluntary retirement just preceding age of superannuation, with a smaller pension.

(6) Amendment would give teachers just and equitable treatment; since without it teachers obliged to retire by failure of health one-half year before compulsory retirement age, would receive only $800.00 from the Chicago Pension Fund after from twenty to fifty years of efficient service, while teacher who could give only one-half year more to a possible 19½ years of service would receive additional pension of $1500.00 a year for the rest of her life. Amendment would correct that objection.

(7) Argument that so many teachers in the sixty's, take advantage of this amendment that it would exhaust the teachers' pension fund is invalid since more teachers in the fifty's will be encouraged by it to continue in service to get the larger pension offered than teachers in the 60's will retire. Teachers in both the 50's and 60's will continue on the average ten years longer in the service and add annually to the Chicago Teachers' Pension Fund, the deductions from their salary.

(8) Provisions in amendment for a physical or mental test for teachers 65 years old or older will be a sufficient safe-guard against their holding on too long.

There follows a copy of the Bill (House Bill No. 130) as it was then being considered in the Legislature to change Section 3 providing for voluntary retirement, and which as then being considered, permitted voluntary retirement of persons who had served in the public schools of the United States twenty-five years or more and of the City fifteen years immediately prior to retirement who were sixty or more years of age (This was changed in the Bill as passed to 65 or more) at an annuity for life of $700.00 if retired at age 60, and $100.00 additional for each additional year of age at retirement to age 65, being $1200 at that age, $1270 at age 66, $1340 at age 67, $1400 at age 68, $1450 at age 69 and $1500 at 70 and thereafter, providing further that at age 65 or thereafter, the Board might require a physical or mental examination and if the person was found incapacitated for service, after trial he or she might "be retired at the annuity provided for his age." The Act contained the same provision as in the Act afterward passed as to persons so retiring remaining subject to advisory service and that nothing in the Act should prejudice the right of such person to an annuity under other statutory provisions concerning the pension fund. Also to amend the title of the Act to include voluntary retirements. It appears at the end of the Report that on motion of Mrs. W. S. Hefferan it was referred to the Special Committee on Legislative Matters and also to the Committee on School Administration.

92 EXHIBIT "G."

(Copy from official printed Proceedings of the Board of Education.)

May 11 1508 1927

(17276) Retirement Law—Amend—Authority to employ Actuary.

The Board by a roll call vote of 9 to 0 adopted and approved recommendation for the employment of a competent firm of actuaries to investigate thoroughly all phases of the proposed House Bill No. 130 to amend the Miller Act by adding Section 3 providing for voluntary retirement.

93 EXHIBIT "H."

May 25 1584 1927

(B-17375) Report from Actuary on Amendment to Retirement Law—Accept and Pay Bill.

Committee reports receipt of report from Henry R. Corbett, Actuary and recommends the acceptance of same and the payment of Mr. Corbett's bill, setting forth report.

94 May 25 1585 1927

Cost to the Board of Education of the Proposed Amendment to the "Miller Law"—Optional retirement ages 65 to 70. At $1000 for life at age 65, $1100 at age 66, increasing $100 per year for each added year of initial age to $1500 as now at age 70.

Three Sources of Gain or Loss.

1—Gain by Replacement of maximum salaries with lower salaries, on account of promotions all down the line until those promoted gradually reach the maximum salary. The amount of these gains has been admirably stated in an exhibit prepared by Mr. James E. Armstrong.

Gain is inevitable.

They do not depend upon the proposed amendment nor even upon the "Miller Law." Each aged teacher will soon give place to a younger one. So the only effect of this amendment is to anticipate by five years or less a gain whch will occur anyhow at age 70.

The gain from this source will be only the use of the money for a few years. A considerable item. Value of it is computed at 4½%.

2—Difference in cost between an immediate smaller annuity and a deferred annuity of $1,500.00 beginning at age 70. The Board would save more by waiting until age 70 as the Miller Law now provides than it would gain by the smaller payments beginning at 65, 66, etc.

NOTE: The amount of annuity at 65 exactly equivalent to a deferred annuity at 70 would be $867 instead of $1000.

The gain from (1) above and the loss from (2) tend to off-set each other. Net result varies from $4195 gain to $1177 loss. Loss will occur in more cases than gain, so net difference to Board will be small. Total net gain or loss through series of years from (1) and (2) combined would be small.

(3) Effect of Proposed Amendment as Compared with Present Miller Law upon regular Teachers' Pension Fund and the Board's contribution thereto.

T-1 "Tendencies"—Amendment will tend to increase or hasten retirements between 65 and 70.

T-2 Will tend to decrease or delay retirements between 55 and 65.

T-3 Present Miller Law tends to decrease or delay retirements between 60 and 70. In the Teachers' Pension fund, retirements before Miller Law enacted show average service 31.6 years, and average age about 57. Retirements since Miller Law show average service 34.2 and average age about 60.

Summary: T-1, T-2 and T-3 have off-set each other somewhat and net loss or gain would probably not be material.

(C-17375) Report of Committee on Legislative Matters.

Special Committee on Legislative Matters reports it is considering House Bill No. 130 providing for an amendment to present retirement law. Recommends that the Board endorse bill providing it is amended so that any persons retired between 65 and 70, because of any physical defects or for other cause, may have the same trial which the statute at present allows in the case of teachers removed for cause. The foregoing report approved and adopted on a roll call by vote of 11 members of the Board to none.

95 EXHIBIT "I."

(Miller Act as amended in 1929)

Title—"An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the Board of Examiners and for the payment of retirement annuities."

Sec. 1 (Compulsory Retirement) Section 1, as amended, is identical with Section 1 of the original Act. See Sec. 1 as set forth in Exhibit "A" (Rec. 68, Abst. 49).

Sec. 2 (Annuities—Subject to call for advisory service) Section 2, as amended, is identical with section 2 of the original Act. See Sec. 2 as set forth in Exhibit "A" (Rec. 68; Abst. 49).

Sec. 3 was changed to include as eligible for voluntary retirement a member of the Board of Examiners, who had not been included and to change the provisions as to service in the public schools of the city, which had formerly required fifteen years' service continuously up to date of retirement. As amended, all that was required was that there should have been fifteen years service in the ag-
96 gregate within the last twenty years prior to retirement. As amended, provision in Section 3 for voluntary retirement at age seventy and over at an annuity of $1500.00 was omitted.

See Exhibit "E" (Rec. 89; Abst. 62).

97 EXHIBIT "J."

(Amended Miller Act effective July 12, 1935.)

"An Act to amend Sections One and Two and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents and for the voluntary retirement of superintendents of school and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal Section 3 of said Act.

Be it enacted by the People of the State of Illinois represented in the General Assembly;

Section 1. Sections 1 and 2 of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents and assistant superintendents and for the voluntary retirement of superintendents of school and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as amended, are amended to read as follows:

Section 1. In every city in this State having a population exceeding 250,000 inhabitants, the Board of Education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

Section 2. Each person so retired from service shall be paid the sum of five hundred dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes. *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service; *And, provided further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

Section 2. The title of said Act is amended to read as follows: "An Act to provide for the compulsory retirement of teachers, principals, district superintendents and assistant superintendents, and for the payment of retirement annuities."

Section 3. Section 3 of said Act is repealed.

98 EXHIBIT "K."

(Copy from official printed proceedings of the Board)

January 12 587 1927

(16274) Retirement from Emeritus List—Deferred.

Report of superintendent recommending that persons thereinafter named who, according to the rec-

ords, will on February 1, 1927 be 74 or more years old and will have served in the public schools of the City 20 years, be retired

99 (January 12 588 1927)

from active service and "shall be paid the sum of $1,500.00 annually for life, provided they shall be subject to call of the superintendent of schools for consultation and advisory service:" Here follow the names of 14 persons, including that of plaintiff Dodge, and after each name, the date of his or her birth, his or her age on February 1, 1927, and length of service on February 1, 1927, which as to Chester C. Dodge is as follows: "Chester C. Dodge 3-16-1852 74 yrs. 10 mos. 45 yrs."

Following the list of names are set forth the "Reasons". That on May 19, 1926, the Miller Act was signed by the Governor. Sets forth in substance the provisions of that Act as to compulsory retirement in the year 1927 at age 74 and that persons so retired who served in the schools of said city twenty or more years prior thereto "shall be paid the sum of $1,500.00 annually, and for life" from the date of such retirement, from the money derived from the general tax levy for educational purposes.

Followed by statement of the two provisos in the Miller Act and the recital that the persons named above had been transferred to "Emeritus Service". Action on said Report, as there appears, was deferred until the next meeting.

100 EXHIBIT "L".

(Copy from official printed proceedings of the Board)

January 23 748 1929

(23168) Retirement from Active Service.

Recommendation of Superintendent that in accordance with provisions of Teachers' Retirement Law (Miller Law) persons whose names are thereafter set forth who have attained age 72 and have served in the Chicago public schools for more than twenty years, "be retired from active service, and that said persons be paid the annuity provided by law in such case, to date from the school month of February, 1929:"

Then follows a list of names of 4 persons, with the school and position of each, the date of birth of each, and length of Chicago service of each, including the name of plaintiff Armstrong, as to whom the following is shown:

"Armstrong, James E.
Englewood High School (Principal) 11-30-55
44 yrs."

101-102 EXHIBIT "M".

103 35263-A Voluntary Retirement of Teachers

Recommendation of Superintendent of Schools to Board of Education "that in accordance with their written requests, the following named members of the teaching force be retired from active service pursuant to the provisions of the Teachers' Retirement Law, effective June 28, 1935:"

Then follow the names of eighty persons and after the name of each, his or her school, with the designation of "principal" if a principal, followed in each case by date of birth and period of Chicago service, showing in each case the month and year when such service commenced and terminated, and if not continuous, the month and year when service recommenced and terminated, followed by number of years of such service. The shortest period of service as to any of such persons so shown in number of years being 25 and the longest 50 years. The name of plaintiff Burns was included in this list, as to whom the Report shows:

"Burns, Elmer E. Austin High Feb. 22, 1868
Jan. 1905-June 1935 30"

104 Said Report concludes with typewritten or mimeographed words, as follows:

"Respectfully submitted,
Wm. J. Bogan,
Superintendent of Schools

Approved as to charge:
H. H. Brackett, Auditor.
Chicago, June 12, 1935."

105 EXHIBIT "N".

(Copy from official printed proceedings of the Board)

June 26 1408 1935

(A-35263) Voluntary Retirement of Teachers—Referred

There then follows the recommendation for voluntary retirement of the Superintendent of Schools in

the same language as above in Exhibit "M" (Rec. 101; Abst. 75) followed by the names of the same persons in Exhibit "M" (the order of same changed slightly) giving the same data as to each as in Exhibit "M", including the data as to plaintiff Elmer E. Burns.

106 At the bottom of the Report it is shown that on motion of Mr. Buehler the Report was referred to the General Committee.

107 EXHIBIT "O-1".

(35263-N) Voluntary Retirement of Teachers

Recommendation by Superintendent of Schools to the Board of Education recommending that in accordance with their written requests the persons thereinafter named be retired from active service pursuant to the provisions of the Teachers' Retirement Law effective on the date herein specified—June 28, 1935, except as to one, as to whom it was to be effective June 29, 1935. There follow the names of 92 persons, giving after the name of each person the school in which he or she taught and the designation "principal" if a principal, followed in each case by date of birth, and period of Chicago service, giving month and year of commencement and termination of same, and where not continuous, month and year of recommencement and termination, followed in each case by length of service in years.

108 The names of plaintiffs Paterson and Reynolds were included in this list, as to whom the Report shows:

"Paterson, Archibald Englewood High Aug. 7, 1868 Jan. 1908-June 1935 27"

* * * * *

"Reynolds, Azile B. (prin.) Armstrong May 18, 1868 Feb. 1898-June 1935 37"

110 Following list of names and data are the following typewritten mimeographed words:

"Respectfully submitted,

William J. Bogan,
Superintendent of Schools

Approved as to charge:
H. H. Brackett, Auditor

Prepared by: Robert D. Gregg

Special Assistant to Superintendent of Schools
Chicago, June 26, 1935."

111 EXHIBIT "O-2".

(Copy from official printed proceedings of Board)

June 26 1412 1935

(N-35263) Voluntary Retirement of Teachers—Referred

There then follows the recommendation for voluntary retirement of the Superintendent of Schools in the same language as above in Exhibit "O-1" (Rec. 107; Abst. 77) followed by the names of the same

persons in Exhibit "O-1", giving the same data as to each as in Exhibit "O-1", including the data as to plaintiffs Archibald Paterson and Azile B. Reynolds, which is also the same as in Exhibit "O-1" (Rec. 107; Abst. 77).

112 At the bottom of the Report it is shown that on motion of Mr. Buehler, the Report was referred to the General Committee.

113 EXHIBIT "P".

(35242-D) Recommendation of the Superintendent to the Board of Education, dated June 26, 1935, showing applications of three persons therein named for voluntary retirement, which "have been presented since the preparation of Reports Nos. 35263-A and 35263-N now pending before you". Then follow the names of three persons with information as to each—effective date of proposed retirement in June 1935, date of birth, period of Chicago service and number of years of Chicago service. Followed by typewritten signature of Wm. J. Bogan, Supt. of Schools, and again dated June 26, 1935.

114 EXHIBIT "Q".

(Copy from official printed proceedings of Board)

June 26 1402 1935

(D-35242) Request for Voluntary Retirement under Teachers' Retirement Law—Referred

The secretary presented the following communication from the Superintendent of Schools: There

then follows the communication, being recommendation for voluntary retirement set forth in Exhibit "P" (Rec. 113; Abst. 79) in the same words and
115 figures, which Report it appears was on motion of Mr. Buehler referred to the General Committee.

116 EXHIBIT "R".

(Copy from official printed proceedings of Board)
Recessed Regular Meeting, Thursday, Jan. 17, 1935
(Page 519)

(34751) Annual School Budget—1935—Adopted

Report from Special Budget Committee that it has considered the annual school budget for 1935 submitted in tentative form and made various changes, and recommends that same, as amended, changed and presented, be adopted, "as the Annual School Budget of the Board of Education of the City of Chicago for the Fiscal Year 1935." That same was adopted by roll call vote of 10 in favor, none against, followed by the Annual School Budget as adopted. Recites that there has been a public hearing after notice by publication.

Section 1 provides among other things

117 (January 17 520 1935)

that the budget sets forth estimates of taxes to be received from levies of prior years, being net estimates after deducting amounts to cover loss and cost of collection, detailed estimates of all taxes to be levied for 1935 and of all current revenues to be derived from sources other than taxation.

Section 2 provides that the amounts hereinafter set forth or so much as may be authorized by law are hereby appropriated for educational purposes and other purposes as therein set forth.

* * * * *

Section 4 provides that no employee should have the right to demand continuous employment and compensation by reason of the appropriation (of salaries and wages) if it becomes necessary to lay him off on account of lack of work or lack of funds.

Section 5 sets forth certain deductions to be made from salaries, with the provision that such deductions shall not be applied in case of any employee whose basic rate of compensation for full time is less than $100 per month.

Section 6 states the estimates of current assets and liabilities as of January 1, 1935, the amounts of such estimated revenue of 1935 available for appropriation, and amounts appropriated, and objects and purposes.

118 January 17 531 1935

Sets forth under various headings a summary of items appropriated, including the following:
"Fixed Charges:

2 Retirements (Miller Law) .....$1,125,000.00"

119 January 17 534 1935

Also sets forth summarized statement of detailed items therein, including

"Other Purposes:

Y—Retirements—Miller Law .....$1,125,000.00"

Total amount appropriated for 1935 shown at bottom of page, $187,270,890.97.

120 January 17 539 1935

Under "Debt Service and Fixed Charges (1)" is the following:

"Y-400 Fixed Charges:

Teachers' pensions

* * * * *

Retirements—Miller Law $1,125,000.00"

121 EXHIBIT "S".

(Copy from official printed proceedings of Board)

January 17 951 1935

(34752) Order, Demand and Direction—Tax Levy for the year 1935—Adopted.

Resolution showing that it is hereby certified by the Board of Education of the City of Chicago that it requires to be levied for the year 1935 upon the equalized assessed value of taxable property in the City of Chicago a school tax for educational purposes and other purposes therein stated, as follows:

Followed by specific general items for the specific amounts as shown, including

"For educational purposes .....$43,000,000.00"

as said purposes and amounts are further set forth

in the Annual School Budget of the Board of Education for the fiscal year 1935.

Recites the adoption of that budget, which is herein referred to and made a part hereof, and which it is therein stated is on file in the office of the secretary of the Board.

Also resolved that formal demand and direction be made upon the City Council to levy the aforesaid taxes for the year 1935.

Also resolved that the president and secretary of the Board are hereby authorized and directed to present and file with the City Council of the City of Chicago "This Order, Demand and Direction, by certified copy thereof."

It is then shown that the resolution was adopted on roll call vote, 10 in favor, none against.

122 EXHIBIT "T".

Pay Roll Sub-Warrant on the face of which is the following:

"(P. R. B. No. 3-A)

PAY ROLL SUB-WARRANT

BOARD OF EDUCATION, CITY OF CHICAGO

270897

Date and sub-number

To the of

Treasurer the City of Chicago Sept. 20 '35

Drawn Against General Warrant No. 64

Pay to the order of James E. Armstrong

Exactly Twenty Five Dollars and 00 Cents....$25.00

and charge the same to the Board of Education, Teachers' Pay Roll Account.

Board of Education,
City of Chicago,
By J. B. McCahey,
President.

Verified:
Br

By F. H. Landmesser,
Secy."

---

and on the face of which also appears, written across the left end thereof, the following:

"Countersigned:

Edward J. Kelly,
Mayor of City of Chicago,

R. B. Upham,
Comptroller of City of Chicago."

On the back thereof appears the following:

"FOR ENDORSEMENT OF PAYEE.

The person to whom this check is payable must endorse it PERSONALLY, excepting where power of attorney is on file with the Payroll Bureau.

Each Endorser Hereof Warrants as follows:

(a) That the payee was living at the time of such endorsement.

(b) If legally acting for or on behalf of annuitant (in the capacity of guardian, conservator, attorney-in-fact or otherwise) THAT such person is still living and entitled to this payment. Cashing

this check AFTER THE DEATH of the beneficiary will subject the offender to Criminal Prosecution.

(Endorse in Ink)

....

....

Address Address"

123 EXHIBIT "U".

"(P. R. B. No. 2)

BOARD OF EDUCATION PAYROLL BUREAU
228 North LaSalle Street,
Chicago, Illinois

Order for Next Annuity Payment.

Warrant No. .....

Mailed .....

(Leave the above two lines blank)

READ INSTRUCTIONS BEFORE SIGNING: This order properly filled out and mailed to the Payroll Bureau, Board of Education, Chicago, in the enclosed, self-addressed envelope, will constitute instructions to mail to you the warrant due on your annuity. If it is not properly filled out and mailed to this office, delay in mailing your warrant will result.

IMPORTANT NOTICE: This order must not be signed or mailed before Sep 27 1935.

This certifies that I am on the retirement roll of the Board of Education, City of Chicago, and that

my signature was affixed below on the ..... day of ..... 19.....

Signed .....,
Annuitant.

Address .....
Street City State

I hereby certify that I personally know the person whose name is subscribed above and witnessed such person affix signature.

Signed .....
Witness

Address .....
Street City State"

In the right-hand corner, reading up, is the following:

"Oct—4 1935"

124 EXHIBIT "V".

(envelope)

P. R. B. No. 4

(Place)
(Stamp)
(Here)

From .....

.....

BOARD OF EDUCATION
228 N. La Salle St.,
Chicago, Ill.

PAYROLL BUREAU

125 EXHIBIT "W".

September 28, 1935

Board of Education
228 North La Salle Street,
Chicago, Illinois.

Receipt is acknowledged of warrant to my order, dated September 20, 1935, drawn on the Treasurer of the City of Chicago by the Board of Education, in the amount of $25.00.

This is accepted to apply on my annuity payment of $75.00, one-twentieth of the annuity provided for by the Law of Illinois in force at the date of my retirement and which Law it is claimed by me is applicable in my case.

I therefore respectfully demand—

(1) Immediate payment of $50.00, the balance now due me;

(2) That future payments be made to me in the amounts heretofore paid, that is, of $75.00 twice monthly.

The enclosed "Order for next annuity payment" has been filled out by me in order to furnish to the Board the information requested, and constitutes no waiver of any claims and demands as above stated.

Respectfully yours,

Chester C. Dodge.

126 EXHIBIT "X".

"(P. R. B. No. 3-A)

PAY ROLL SUB-WARRANT

BOARD OF EDUCATION, CITY OF CHICAGO

To the Treasurer of the City of Chicago

Date and Sub-number

272992
Oct. 4 '35

Drawn against General Warrant No. 68

Pay to the order of.....James E. Armstrong Exactly Twenty Five Dollars and 00 Cents....$25.00 and charge the same to the Board of Education, Teachers' Pay Roll Account.

Board of Education,
City of Chicago,
By J. B. McCahey,
President.

Verified:
Br.

By F. H. Landmesser,
Secy."

---

and on the face of which also appears, written across the left end thereof, the following:

"Countersigned:
Edward J. Kelly,
Mayor of City of Chicago.

R. B. Upham,
Comptroller of City of Chicago."

On the back thereof appears the following:

"FOR ENDORSEMENT OF PAYEE.

The person to whom this check is payable must endorse it PERSONALLY, excepting where power of attorney is on file with the Payroll Bureau.

Each Endorser Hereof Warrants as follows:

(a) That the payee was living at the time of such endorsement.

(b) If legally acting for or on behalf of annuitant (in the capacity of guardian, conservator, attorney-in-fact or otherwise) THAT such person is still living and entitled to this payment.

Cashing this check AFTER THE DEATH of the beneficiary will subject the offender to CRIMINAL PROSECUTION.

(Endorse in Ink)

.....

.....

Address

.....

.....

Address"

128-130 Summons issued October 8, 1935 by Clerk of the Superior Court naming all defendants, answerable on the first Monday of November, 1935 or when served on any defendant less than twenty days of said date, on the third Monday of November, 1935.

Return shows service on all defendants.

132 Order, October 9, 1935, setting case for hearing November 18, 1935.

134 Notice by attorney for plaintiffs for October 9 of motion to set case for hearing.

136 Appearance filed October 10 by Barnet Hodes, Corporation Counsel of City of Chicago, on behalf of defendants Edward J. Kelly, Mayor, Gustave A. Brand, City Treasurer, and Robert Upham, Comptroller.

138 Appearance filed October 16, 1935, by Richard S. Folsom, attorney, on behalf of defendants Board of Education of the City of Chicago, James B. McCahey, President and Member; Ernst Buehler, Vice-President and Member; Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied, Mrs. W. S. Hefferan, Members of said Board; Frank H. Landmesser, Secretary of the Board, and Harry H. Brackett, Auditor of said Board.

140 Notice filed by attorney for plaintiffs November 12, 1935, of motion for order granting leave to Grace L. Ackley and more than 800 others to file Intervening Petition and become additional and intervening plaintiffs and parties to this suit.

142 Order entered November 12, 1935, granting leave to Grace L. Ackley and 861 others to file Intervening Petition and making each of them an additional intervening plaintiff with like effect as if each of them had been joined as one of the original plaintiffs herein.

144 Petition and Intervening Complaint of Grace L. Ackley and more than 800 other teachers, principals and other educational employees hereinafter named to join in the Complaint filed herein as Intervening plaintiffs, filed November 12, 1935, alleges:

Paragraph 1—That pursuant to leave granted by order of court given, Grace L. Ackley and more than 800 others hereinafter named, by Allan J. Carter, their attorney, enter the appearance of each as Intervening Plaintiffs. Names of said Intervening Plaintiffs are set forth in Paragraphs 2 to 7 hereof—that is to say:

145 Paragraph 2—The following Intervening Plaintiffs have been compulsorily retired under said Miller Act at an annuity as therein provided for to each of $1500.00 a year for life: Grace L. Ackley, John E. Adams, L. F. Affhauser, Mary D. Ahearn, Laura E. Ashleman, Jane S. Atwater, Emma V. Bailey, Mary E. Bates, Frances E. Benson, Ralph E. Blount, Moritz Boehm, Anna R. Bonfield, Mary Bonfield, Susan Bonfield, Mary DeL. Bowen, Mary G. Brants, Benjamin F. Buck, Anna R. Burke, Mary Burke, J. Elmer Cable, Wickliffe I. Cable, A. Esther Camfield, W. H. Campbell, Simon F. Casey, Rose Colby Caverly, Cora Caverno, Nora A. Clark, George M. Clayberg, Novella M. Close, Charles C. Cobb, Walter H. Comstock, Charles A. Cook, Mary E. Coppersmith, Mary A. Crotty, Jeannette C. Cummings, Maud Cutler, George W. Davis, Pauline O. Eckstorm, Jay C. Edwards, Margaret S. Fitch, Mary A. Forkin, Josephine C. Ford, Martha Foote, Oliver D. Frederick, Christopher Friese, Anna R. Gallagher, Etta Q. Gee, May Gifford, Jennie E.

Goodrich, Eva Griswold, Alice W. Gwinn, Marcella R. Hanlon, Walter R. Hatfield, James H. Henry, George C. Heritage, Mary B. Herrick, Nano T. Hickey, Mary E. Higbee, Edward E. Hill, Morgan G. Hogge, Sarah E. Holmes, C. Lauron Hooper, William L. Ilgen, Martha J. Imlah, Ada Byron Johnson, John A. Johnson, C. Elizabeth Jones, Winifred E. Jones, Margaret E. Keegan, Arabella Kennedy, Elmer L. Kletzing, Josiah F. Kletzing, Anna Lacy, Abby E. Lane, Samuel Leland, John L. Lewis, Charles D. Lowry, Fannie E. Lynch, Mary Ellen Lynch, Hattie L. Lynn, Margaret MacDonald, Emma March, Mary R. Marsh, Lillian Maxey, John W. May, Clara H. McFarlin, Oscar L. McMurray, Samuel R. Meck, Carl O. Meier, John C. Miller, Joseph F. Morse, Leonora Morton, Rose Mullay, Agnes A. Nelson, Fred R. Nichols, Minnie K. Nicolai, John S. Nicoll, Robert Nightingale, Elizabeth A. Noel, Catherine Norton, Marie Therese Norton, Herman S. Pepoon, Charles H. Perrine, Frederick W. Plapp, Edward Prosser, Mary I. Purer, Fanny S. Reider, Katherine A. Riordan, Florence Prouty Robinson, Margaret M. Royce, Carrie H. Ruarc, Au-
146 gusta F. Schelbach, Inger M. Schjoldager, Ada B. Sempill, Ida A. Shaver, William H. Shoemaker, Lucy S. Silke, Edmund B. Smith, Ettie L. Smith, James H. Smith, Anna L. Spieler, Malvine Springe, Frank W. Stahl, John H. Stehman, Nina M. Stephens, Edwina Stimpson, John H. Stube, Alice Sturtevant, Minnie M. Tallman, Neil M. Thomson, Leona L. Thorne, Mary E. Thresher, Frank Ellen Tremain, John W. Troeger, Charles M. Turton, Mary E. Watts, Mary A. Weisman, Dora Wells, Mary E. Wright, Jennie D. Wyse, Dora W. Zollman, Mary

J. Zollman, Elizabeth E. Fisk, Nellie M. Horen, Julia M. Kennedy, Louise E. Poppelbaum.

Paragraph 3—That the following have voluntarily retired at ages 70 or over at an annuity as provided for in said Act to each of $1500.00 a year for life: Minnie T. Alexander, Mary A. Hotchkin, Mirabelle S. Stodder, Carrie E. Allen, Ida I. Armstrong, Sarah J. Ashton, Bertha Benson, Mary M. Boyce, Joseph Cermak, Bessie Del Banco, Mary A. Emerick, Franklin P. Fisk, Kate E. Ford, Medora Gammon, Celia M. Gilmore, Julia E. Goodman, Mary F. Goss, Mary R. Hecox, Isabella Hudson, Lucy C. Johnstone, Adelaide Jordan, Sara Ida Knight, Clarinda T. Martin, Herbert L. Merrill, Mary A. Miller, Alvin R. Moore, Isabel Richman, Edward C. Rosseter, Anna M. Schnuhr, Charlotte G. Schramm, Inez E. W. Schroeder, Fanny R. Smith, Mary E. Sneed, Fanny Stapleton, Louisa Tennant, George L. Voorhees, H. Annie Watson, Alice Wegener, Nellie White, Worrallo Whitney, Emma Yantis, Mary E. Danforth, Henrietta Dupuy, Elizabeth Gibbons, Agnes R. Snitjer.

Paragraph 4—The following Intervening Plaintiffs voluntarily retired after July 1, 1927 and before July 1, 1929—

(A) Of whom the following so retired at age 65 at an annuity to each of $1,000 a year for life: Lor-
147 ena A. Allison, Anna G. Baer, Ella M. Brophy, Mary N. Clancy, Margaret Fitzgerald, Mary W. French, Frances A. Hoey, Anna L. Lodge, Mattie E. Lough, Belle H. MacDonald, Anna G. MacDougal, Irene B. McKnight, Isabel A. Parker, U. G. Potter, Annie L. Reid, Catherine Stokes.

(B) That each of the following retired at age 66 at an annuity to each of $1,100 a year for life: Mary M. Blodgett, Emma Dean, Lizzie Justi, Cecilia B. Murphy, Sue B. Myers, Albertine J. Olson, Effie L. Perry, Julia L. Rosenthal, Martha L. Smith, Maria M. Stedman, Caroline Baldwin, Fannie Merritt.

(C) That each of the following retired at age 67 at an annuity to each of $1200.00 a year for life: Lily M. Baird, Grace H. Beeler, Isabel B. Boynton, Henrietta M. Coone, Emma E. Davis, Alice A. Freund, Emil Groener, Ida L. Groves, Xenia Jenkins, Nancy E. Linton, Minnie E. McElligott, Fannie S. Miller, Mattie Page, Fanny M. Palmer, Mildred M. Ramey, Florence V. Ross, Ellen V. Wallenberg, May Weddle, Sarah R. Wild, Frances M. Thomas.

(D) That each of the following so retired at age 68 at an annuity to each of $1300.00 a year for life:
148 Esther J. W. Barker, Catherine A. Decker, Catherine M. Delanty, Nellie Dunton, Marie Goddard, Orrel V. Huntley, Margarette G. James, William J. Kopp, Janet D. McClelland, Sadie Myers, Jessie Nicol, Catherine O'Connor, Alice M. Patchen, Cora S. Powers, Jane F. Reid.

(E) That each of the following so retired at age 69 at an annuity to each of $1400.00 a year for life: Lynora Buckley, Margaret J. Cummings, Elroy A. Dillon, Virginia W. Freeman, Otto Greubel, Effie Johnston, Sarah A. Kirkley, Mary J. Quirk, John F. Stacey, Jane E. Williams, Margaret A. Fisher, Belle G. Peet.

Paragraph 5—That the following Intervening Plaintiffs voluntarily retired under said Miller Act after July 1, 1929 and before June 12, 1935:

(A) Of these, the following so retired at age 65 at an annuity as provided in said Miller Act to each of $1000.00 a year for life: Blanche D. Abbot, Jennie S. Allison, Carrie E. Armstrong, Katherine E. Ashelby, Anna S. Bachman, Zella C. Baird, Katherine C. Baker, Jane B. Baldwin, Nettie M. Barry, Minnie M. Batterton, Byrnina Beardsley, Rose M. Beatty, Margaret M. Benson, Anna S. Bishop, Martha Violet Bishop, Grace P. Bixel, Lizzie V. Borthwick, Elizabeth B. Britt, Jessie M. Brown, Mamie J. Buckley, Ella L. Budd, Robert J. Burger, Emma B. Campbell, Sarah M. Campbell, Nettie A. Chadwick, Jennie C. Chandler, Mary A. Chappell, Rosalie B. Chivington, Anna M. Cody, Mary E. Conners, Sadie M. Cooney, Stella R. Cottrell, E. Isabel Crosby, Henrietta A. Crowley, Anna M. Cunningham, May E. Curtiss, Flora L. Dahlen, Annie E. Daley, Bridget M. Dalton, Florence G. Daniel, Elizabeth Deadman, Eula W. Deaton, Etta C. Deffler, E. Blanche Dickinson, Franklin C. Donecker, Mabel F. Doty, Maud A. Drewett, Nora P. Grogan, Sarah Hulsizer, Mina R. Jones, Rose M. Logeman, Adele M. Newton, Anna J. O'Neill, Sarah
149 C. Quirk, Cora P. Tennery, Mary E. Tosney, Alice M. Dummer, Fred C. Dunham, Ella J. Dymond, Ella E. Earle, Helen B. Eastman, Josephine C. H. Erzinger, Rose A. Farley, Elizabeth E. Farrell, Chattie E. Field, Mary F. S. Flynn, Lillian Foley, Elizabeth D. Fox, Mary A. Fox, Annie C. Fraser, E. Ellen Fuhrman, Alice L. Garthe, Anna S. Gaw, Helen V. Gibson, Ida K. Gimbel, Nancy G. Gladish, Elizabeth Goodbody, Annie H. Goodyear, Miriam L. Graham, Alice Grove, Ellen W. Hansen, Frances E. Harden, Helena D. Harper, Mary E. Hassett,

Ida E. Hegner, Julia Herrick, Frances M. Hevle, Effie Hoerner, Julia E. Hill, Alice L. Hogan, Fred G. Holmes, Laura L. Hood, Lila M. Hopkins, Mary G. Hudson, Amanda E. Isensee, Arthur W. James, Anna M. Johnston, Martha M. Johnston, Marion L. Jones, Nettie L. Jones, Louise Joyce, Doris F. Kahn, Katherine M. Keating, Sue B. Keller, Mary A. Kenney, Dorothea M. Kirby, Ernestine L. Kircher, Louise J. Klenze, Lillian A. Kosier, Matilda C. Krimmel, Bertha Kuntz, Lillian E. Kurtz, Louise H. Kurz, Inez M. Ladd, Anna E. Lancaster, Harriet C. Lapham, Nellie E. Larkin, Emma L. Lee, Nellie L. Linsley, Letta D. Little, Evelyn M. Loucks, Louise A. Lyman, Emily Magner, Elizabeth M. Manix, Marie L. Mann, Myrtle E. Mattison, Mary McCracken, Kate McKinney, Sarah C. Miniter, Zaidee E. Mitchell, Katherine E. Mohrmann, John B. Moulton, Elizabeth W. Murphy, Dora Belle Neal, Anna T. Northway, Mary Norton, Annie O'Brien, Mary O'Brien, Katherine O'Grady, Rebecca Okeson, Evangeline P. Olson, Ella M. Ottaway, Allen M. Otwell, James W. Parris, Mary G. Pearse, Ida May Peaslee, Anna L. Peat, Elizabeth Perry, Hans C. Peterson, Amelia L. Petyan, Jennie E. Plumbe, Ellen Pool, Florence M. Porter, Harriet L. Post, Anna J. Powell, Clara Putzki, Mary A. Rafferty, Margaret E. Rich, Rachael A. Ringland, Fannie S. Roberts, Katherine G. Rogers, Mary Robson, Addie E. Roziene, May E. Ryan, Fannie Samuels, Elizabeth Estella Sanborn, Mary J. Saunders, Adeline S. A. Schaefer, Mary T. Schaefer, Hermine K. Schramm, Emma A. Schreiner, Amelia Schweitzer, Emma B. Scudder, Viola M. Shaw, Mabel C. Sherwin, Eleanor C. Smith, Elizabeth Smith, Grace T. Smith, Harriet

H. Smith, May E. Smith, Edith E. Snyder, Mary Solberg, Agnes T. Spellacy, Joanna Stack, Jessie L. Stone, Agnes Styles, Mary E. Sullivan, Sarah C. Thomas, Sellie H. Toole, Rose Toomey, Elmer L. Valentine, Gertrude M. Van Lieu, Catherine M. Virts, Georgia Wagner, Ella M. Wallace, Effie E. Watson, Sarah C. White, Belle Whyte, Mary F. Willard, Fanny Williams, Belle Wilson, Lillian M. Wilson, Alice Wiltshire, Augusta L. Wines, Adrienne L. Yerbury, Margaret C. Young, Mary Zimmerman, Ferdinand J. Zipf, Annie J. Anderson.

(B) Of these, the following so retired at age 66 at an annuity as provided in said Miller Act to each of $1100.00 a year for life: Emma W. Allen, Annie E. Arnold, Mary E. Babcock, Carrie R. Barracks, Cornelia Beardsley, Jessie E. Blodgett, Elizabeth S. Bohman, Elinor K. Boothroyd, Bertha L. Bowen, Mary E. Buckley, Mary R. Cleveland, Nellie M. Cochran, Martha Cochrane, Nellie J. Cook, Pauline G. Dennis, Katherine M. Egan, Minnie Euphrat, Mary A. Fanning, Edith B. Flagler, Eleanor Hampton, Ella B. Hare, Catherine Hauch, Jacob H. Hauch, Warren C. Hawthorne, Josephine S. Hersperger, Luman Hewes, Nellie G. Hooker, Margaret Huleatte, Charlotte J. Huscher, E. Blanche Jennings, Kate Keith, Minda F. Letterman, Charles E. Linebarger, Jennie Lintuman, Margaret C. Lord, Therese McDermott, Catherine C. McLean, Mary C. McMahon, Mary E. Meythaler, Helen Mitsch, Jennie Darrow Moore, Cora B. Mowbray, Julia T. Murphy, Z. Anna Novotny, Harriett Ostrom, Alwine Pammel, John A. Peters, Kate Quarton, Minnie C. Reuter, Fanny A. Royall, Gertrude D. Schilling, William Seabrook, Mabel E. Smallwood, Carolyn I. Smith, Ella C. Sul-

livan, Mabel Sykes, Annie H. Templeton, Jennie C. Towns, Nora W. Walker, May B. Wallace, Mary Waters, Jessie Westbrook, Emma M. Westerfield, Clara L. Wightman, Jessie R. Williams, L. Ella
151 Wilmes, Leonora R. Wilson, Harriett W. Winter, Edith H. Deal, Gertrude H. Foote, Anna Jones, Letitia S. Lamkey,

(C) Of these, the following so retired at age 67 at an annuity as provided in said Miller Act to each of $1200.00 a year for life: Martha J. Adams, Louise Alvord, Sarah E. Ausemus, Ida A. Bamberger, Sarah J. Baynes, Almeda M. Bedwell, Lucy A. Benson, Ida M. Brown, Mary L. Burke, Anna Church, Grace Church, Mary F. Clark, J. Katherine Cutler, Minnie A. Dietz, Therese T. Dillon, Charlotte R. Dutton, Ada C. Dyson, Hulda L. Fischer, Angela M. Gerrity, William J. Goggin, Nellie C. Goodnow, Harriet W. Grace, S. Letitia Greene, Nellie Joy Hahn, Katherine M. Hall, Anna I. Harden, Margaret M. Harnett, Minna S. Heuermann, Ida T. Hoffmann, Mary Hynds, Ida L. Jaeger, Ada Jewell, Elizabeth Joyce, Elizabeth A. Keating, Margaret W. Kelly, Laura M. Kimpton, Josephine Krohn, Barbara C. Leu, Nellie Green Long, Harriet B. Lutz, Katherine Maloney, Hattie R. Maxwell, Nellie McCormick, Elizabeth McKillop, Elizabeth M. McLean, Ida Mighell, Erin C. Miller, Katherine T. Murphy, Emma E. Olide, Lena N. Olson, Mary G. Pennington, Alice M. Quigley, Helen M. Rathbun, Mary I. Reeling, Helen F. Roberts, Maud Secrest, Mary A. H. Simpson, Agnes M. Smith, Effie M. Smith, Josephine Stewart, Anna Straus, Nena H. Stuart, Catherine Sullivan, Berkeley J. Thomas, Julia R. Tolman, Laura M. Truscott, Miriam D. Tuttle, Mina M. Watson, Elizabeth D.

Wood, M. Ellen Yohn, Elizabeth C. Buhman, Edwin E. Hand,

(D) Of these, the following so retired at age 68 at an annuity as provided in said Miller Act to each of $1300.00 a year for life: Clara B. Allen, Anna M. Andrus, Johanna Bartky, Alma Beach, Susan M. Beaman, Elizabeth Benning, Miriam E. Bicknell, Millicent B. Bingham, Rosalie W. Bross, Alice L. Burns, Jennie B. Caswell, Sophie Chenoweth, Claus H. Claussen, Mary F. Curry, Ella Cusick, Elizabeth F. Daly, Annie E. Dillon, Elizabeth C. Fife, Mary T. Flynn, Katherine B. Fonvielle, Auguste J. Forster,
152 Sue Gallaher, Annie S. Gauch, Eugenie F. Guth, Florence Healy, Alice M. Herbert, C. Bertha Holt, Howard N. Howland, Mary L. Hurley, G. Ovedia Jacobs, Winford D. Keary, S. Eva Kendall, Emma D. Knox, Mary E. Maginnis, Carrie A. Mathews, Frances I. Mellhon, Anne E. G. Morse, Jane H. O'Brien, Minnie C. Olson, Ida M. Pohlman, Lelia Purdy, William W. Reed, Flora V. Renaud, Mary C. Scribner, Edith M. Smalley, Stella B. Vincent, Edith Meyer Visger, Agnes M. Watson, Martha Wilson, Catherine A. Burke, Minnie Fennell, Mary E. O'Neill, Joseph H. Sheffield.

(E) Of these, the following so retired at age 69 at an annuity as provided in said Miller Act to each of $1400.00 a year for life: Katherine E. Adams, M. Joice Adams, Mary T. Adams, Allison W. Augar, Emma L. Badger, Margaret Baker, Edith M. Brogan, Clara Maude Brown, Dixie Lee Bryant, Margaret M. Byrne, Elizabeth Campbell, Eleanor Chittick, Ellen F. Costello, John M. Davies, Jane P. Deming, Lura L. Doran, Kate E. Dover, Martha H. Dwyer,

Alice F. Ely, Lillian Farnam, Fannie T. Farrell, Bertha Fontayne, Thomas H. Furlong, Sarah E. Gay, Minnie E. Gray, Lillian Greenleaf, Kate O. Guenther, Eleanor L. Hally, Caroline Hammerschmidt, Walter J. Harrower, Sarah McG. Hennen, Jean W. Hubbard, Carrie A. Hughes, Mathilde Jaeger, Emma M. James, Mary Jones, Agnes W. Keith, Anna J. Kerrigan, Eva A. Latham, Emma M. Letz, Anna N. Loftus, Margaret E. Lyons, Myrtilla M. Mace, Malinda M. Mann, M. Josephine McConville, Susan J. McDonnell, Anna McKillop, Agnes McIlhon, Margaret E. McLaughlin, B. Anne Meagher, Elise Mendius, Harriet C. Munsell, Mary A. O'Brien, Jane Black Okeson, Josephine Parker, Arthur L. Penhallow, Anna V. Pettit, Helen K. Phelps, Margaret Powell, Frank W. Rieder, Anna T. Robinson, Mary L. Russell, Hannah Schiff, Jennie P. Sorenson, Anna M. Stockbridge, Ada R. Thompson, Agnes G. Troschel, Elizabeth E. Waldt, Katherine O. Ward,
153 Anna Albertine Wetter, Elmeda J. Wilder, Fannie B. Wilson, Mary C. Kingsbury, Margaret Mahoney.

Paragraph 6—The following Intervening Plaintiffs made written requests to the Board of Education during the months of May and June, 1935, for voluntary retirement under the Miller Act. Superintendent of Schools of the City of Chicago recommended that they should be retired from active service in accordance with said written requests. Such written requests, as more fully set out in the Complaint, were not acted upon by said Board except to defer action at a meeting held June 26, 1935, and at a meeting of said Board on July 24, 1935, defendant Board adopted a report of the Superintendent of Schools purporting and attempting to com-

pulsorily retire as of age 65 or over all of such Intervening Plaintiffs under the Miller Act as amended in 1935 at an annual annuity of $500.00.

(A) Of these, each of the following had in June, 1935, attained age 65 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1000.00 a year for life:

Recommended by Superintendent of Schools for retirement, as appears from printed proceedings of Board of Education of June 26, 1935, No. A-35263, pages 1408 and 1409: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Harry W. Abbott, Margaret M. Barrett, Marie E. Burns, Ida M. Clark, Anne Feely, Edith K. Hammill, May Hartley, Emma F. Heerwagen, Rosanna M. Kiersted, Olga A. Liedberg, Charlotte L. Mitchell, Amelia
154 (Emily) Reinhard, Rebecca F. Turk, Margaret W. Van Osdel, Carrie G. Wilbur, Anna J. Wilson.

Recommended for retirement as appears from printed proceedings of said Board of June 26, 1935, No. N-35263, pages 1412 and 1413 (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78): Caroline F. Arnold, Anna C. L. Bartsch, Nellie M. Bennett, Jessie E. Black, Sarah J. Brittenham, Elizabeth E. Eckhardt, Abigail C. Ellings, Sarah M. Evans, Lillian E. Fitch, Nellie T. Flannery, Lottie Hancox, Anna T. Holden, Catherine P. Hurley, Visa McLaughlin, Anjuline O. Meyer, Rose Mary O'Brien, Elizabeth Letzkuss Read, Helen M. Sabin.

(B) Of these, each of the following had in June, 1935, attained age 66 and was entitled on said written request to be retired under the Miller Act as

effective in June, 1935, at an annuity of $1100.00 a year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Sarah Jane Berry, Francis E. Brimblecom, Alice T. Bunker, Margaret Coogan, Nellie J. Scott, Lillyan Short, Rose M. Wookey, Emma L. Glavin.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mary P. Blount, Amelia C. P. Brownlow, Elvira D. Cabell, Nellie A. Daum, Theresa J. Donnelly, Alice H. Fassett, Sarah A. Flannery, Lillys R. Geer, Clinton Huffman,
155 Charles G. Krauskopf, Mary E. Kremer, Julia O'Brien, Carrie Rupel, Annie L. Smith, George Steffens.

Of these, Intervening Plaintiff Elizabeth Lord, had attained age 66 in June, 1935, as appears from report of Superintendent of Schools, No. H-35380, presented at the meeting of defendant Board on July 24, 1935, (page 51 of printed proceedings of said Board at said meeting) and had presented her written request for voluntary retirement effective June 28, 1935.

(C) Of these, each of the following had in June, 1935, attained age 67 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1200.00 a year for life:

Recommended by Superintendent of Schools, as appears from printed proceedings of Board of June 26, 1935, No. A-35263, (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Olive E. Cooper, Agnes L. Danielson, M. E. Kemper, Sarah E. Lyons, Cora L. Sunderland, Edith L. Young, Grace E. Jackson, Mary Taylor.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mary H. Dameier, Ida M. Edwards, Mary E. MacMillan, Lucy C. O'Connor, Cora L. Rigby, Anna T. Schneidewendt, Minnie A. Stevens, Edith V. Watson, Mary C. Whitmore, Lillian H. Wright.

156 (D) Of these, each of the following had in June, 1935, attained age 68 and was entitled on said written request to be retired under the Miller Act as effective in June 1935, at an annuity of $1300.00 a year for life:

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Lilly M. Compher, Mary A. Doherty, Mary G. Guthrie, Flora E. Hallinen, Charlotte Leekley, Carrie F. Patterson, Romaine S. Peter, Virginia L. Pfuderer, Mary K. Platten, Walter W. Roberts.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst.

78) Mary Ella Colwell, Harriet Eckhardt, Sarah J. Goodrich, Katherine F. O'Connell, Samuel E. Kitchey.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of Board of June 26, 1935, No. D-35242, Pages 1402 and 1403: G. Charles Griffiths.

Of these, Intervening Plaintiff Charles A. Kent, had in June, 1935, attained age 68, as appears from report of Superintendent of Schools, No. H-35380, presented at said meeting of said Board of July 24, 1935 (page 51 of the printed proceedings of said Board at said meeting) and had presented his written request for voluntary retirement on June 29, 1935.

157 (E) Of these, each of the following had in June, 1935, attained age 69 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1400.00 a year for life:

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Lillian Brumagim, S. J. A. Conner, Ella M. Danforth, Mary A. Engelke, Bessie J. Foudray, Herman Garrison, Anna S. Halliday, Margaret A. Huggard, Halsey H. Matteson, Rose E. Rafferty, Fred E. Smith, Lena M. Whitcomb, Anna M. C. White, Edward F. Worst.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings

of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Lewis W. Colwell, Jude E. Davis, Mary B. Livingston, William Schoch, Albert L. Smith, Mary L. Walsh, William T. Wilson.

Recommended for retirement by Superintendent of Schools, as appears from printed proceedings of said Board of June 26, 1935, No. D-35242, Pages 1402 and 1403: David L. Murray.

Paragraph 7—Intervening Plaintiff Adeline R. White had in June, 1935, attained age of more than 72 years and was until June 28, 1935, in the service of the defendant Board as teacher in the public schools of Chicago and had been a teacher in such employ for more than 25 years. At the meeting of said Board of June 26, 1935, as appears from printed proceedings thereof, page 1414, No. O-35263, the Superintendent of Schools recommended that she be compulsorily retired as of June 28, 1935,
158 pursuant to Sections 1 and 2 of said Miller Act as then in force, which provided for the compulsory retirement of teachers over 70 at an annuity of $1500.00 a year for life. No action was taken by the Board on such recommendation except to refer the report to the General Committee of the Board and on July 24, 1935, the Board adopted the report of the Superintendent of Schools and attempted to compulsorily retire said Intervening Plaintiff under said Miller Act as amended in 1935, at an annuity of $500.00.

Paragraph 8—Each of the Intervening Plaintiffs named in Paragraph 2 is one of the persons referred to in the original Complaint as one of the

retired teachers, principals, etc. compulsorily retired from active teaching in the public schools of Chicago prior to July 11, 1935, by the defendant Board of Education and is similarly situated to the original plaintiffs Dodge, Cook, Loomis, Whigam, Armstrong, Morse, Keen, Coddington and Toole, and each such Intervening Plaintiff was compulsorily retired under the Miller Act from active teaching in the public schools of said City of Chicago and from active service in such employment of defendant Board by appropriate proceedings of said Board, and at the time of his or her retirement had attained age 70 or more years and had served in the public schools of said city for 20 or more years, and defendant Board in so
159 compulsorily retiring each of said Intervening Plaintiffs specifically provided that each was retired under said Miller Act upon an annuity of $1500.00 a year thereafter for life, as in said Miller Act provided.

Paragraph 9—It is alleged that each of Intervening Plaintiffs named in paragraphs 3 and 4 above is one of the retired teachers, principals, etc., who voluntarily retired under the Miller Act as amended in 1927, from active teaching in the public schools of Chicago and is similarly situated to original Plaintiff McClelland, and that each made written request for retirement and was retired from active teaching, and at the time of such respective retirement of each had attained the age as shown as to each in paragraphs 3 and 4, and that each had served in the public schools of Chicago for 15 years or more immediately prior to retirement, and upon retirement each was entitled to an annuity for life

of the amount each year as shown as to each in paragraphs 3 and 4.

Paragraph 10—That each of the plaintiffs named in paragraph 5 above is a retired teacher, principal or other educational employee voluntarily retired under the Miller Act as amended in 1929 after July
160 1, 1929 and before July 11, 1935; is similarly situated to original plaintiffs Baird, Corbett, Callahan, Dean, Dougherty, Tierney and Woulfe; each made written request for retirement and was thereupon so retired from active teaching, and that at the time of such retirement each had attained age as to each shown in paragraph 5 and had within the last 20 years prior thereto served in the public schools for an aggregate of 15 or more years and had served in the public schools of the United States for 25 or more years.

Paragraph 11—That each of Intervening Plaintiffs named in paragraph 6 above is one of the teachers, principals or other educational employees who during May and June, 1935, made written request for voluntary retirement under the Miller Act as same was then in force and before the amendment of 1935 became effective, had each then attained ages shown as to each in said paragraph 6, and that the service of each during the 20 years prior to June, 1935, aggregated 15 years or more in the Chicago public schools and 25 years or more in the public schools of the United States, and that each at the time of such application was entitled under
161 the law to voluntary retirement and receive thereafter for life an annuity in the amount as shown as to each in paragraph 6.

Paragraph 12—The Intervening Plaintiffs adopt the allegations in said Complaint with same effect as if herein again inserted and repeated at length and applied to them, and each joins in the prayer of the original complaint and every paragraph thereof as fully as if each had been specifically and originally named as plaintiff in the original complaint.

Paragraph 13—Intervening Plaintiffs pray that the pleadings heretofore or hereafter filed for original plaintiffs stand as like pleadings for Intervening Plaintiffs, as if each Intervening Plaintiff was named as co-plaintiff with original plaintiffs and that any pleadings which have been or may hereafter be filed on behalf of defendants to pleadings of original plaintiffs also stand as to Intervening Plaintiffs.

Paragraph 14—Intervening Plaintiffs pray that in the orders already entered and proceedings had herein and any further proceedings and further orders and decrees said Intervening Plaintiffs be severally considered and their rights be adjudicated as fully as if they had been made co-plaintiffs with original plaintiffs.

162 Paragraph 15—Intervening Plaintiffs pray that each be granted full relief under the prayer and each paragraph of original complaint and that they be given benefit of all allegations in the original complaint and be granted all the relief prayed for therein, as if such allegations and prayer for relief were herein set forth in full and as if they had originally joined as co-plaintiffs in said original complaint, and also pray for other, further and different relief as equity may require, etc.

Signed by Intervening Plaintiff Dora Wells and sworn to November 12, 1935, who in her affidavit states that she is one of the petitioners and intervening plaintiffs; that she had read and knows the contents of the petition and that the same is true, and that she is in this behalf agent of her intervening co-plaintiffs therein named.

165 Motion to dismiss, filed November 18, 1935, on behalf of defendants City of Chicago, Edward J. Kelly, Mayor, Gustave A. Brand, City Treasurer, and Robert B. Upham, Comptroller of said City, by Barnet Hodes, Corporation Counsel, moved to dismiss case, and as grounds set forth that plaintiffs' Complaint is substantially insufficient in law in the following particulars:

1—That plaintiffs have not stated such a case as entitles them or any of them in a court of equity to any relief against these defendants or any of them concerning matters contained in the Complaint.

2—That it appears in the Complaint no contractual or vested rights are involved.

166 3—That it appears that the acts of the General Assembly which plaintiffs seek to have declared unconstitutional do not violate any provisions of the Illinois Constitution or the United States Constitution.

4—That it appears from the Complaint that plaintiffs' remedy, if any, is in court of law.

5—That it appears from the Complaint that the remedy sought is a money judgment against the defendant Board of Education.

6—That the Complaint alleges that all things which plaintiffs seek to enjoin have already been done.

Wherefore defendants move to dismiss; that defendants go hence without day, and that defendants have judgment for costs.

Signed by City of Chicago and the said Mayor, said Treasurer and Comptroller of said City, by Barnet Hodes, Corporation Counsel.

167 Affidavit of Joseph Grossman that he is First Assistant Corporation Counsel of City of Chicago, is authorized to make the affidavit and that the foregoing motion to dismiss is not interposed for purpose of delay and is well-founded in law. Dated November 18, 1935.

169 Answer, filed November 20, 1935, on behalf of defendants Board of Education of City of Chicago; James B. McCahey, president and member thereof; Ernst Buehler, Vice-President and member thereof; Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied and Mrs. W. S. Hefferan, members of said Board; Frank H. Landmesser, Secretary, and Harry H. Brackett, Auditor, to Complaint of Chester C.
170 Dodge, *et al.*, complainants, reserving unto defendants all right of exceptions to said Complaint, says:

1—Admit that complainants are teachers or principals in the Chicago public schools as alleged in Paragraph 1 of Complaint, but deny that plaintiffs were retired as alleged in paragraph 1; deny that they had served in the public schools of United States as there alleged.

Admit that plaintiffs have been retired from public school system of City of Chicago, and that all their services as principals or teachers have been severed pursuant to statute.

2—Defendants admit that defendant Board of Education has been a body politic and corporate since April 1917; that James B. McCahey is president and member thereof; Ernst Buehler, Vice-President and member thereof; that defendants Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied and Mrs. W. S. Hefferan are members; that defendant Frank H. Landmesser is Secretary and Harry B. Brackett is Auditor of said Board; that Defendant Edward J. Kelly is Mayor of City of Chicago, and defendant Gustave A. Brand is City Treasurer and defendant Robert B. Upham is Comptroller of said City.

171 3—Defendants admit that prior to April 20, 1917, defendant Board was empowered to employ teachers and fix amount of their salaries.

4—Admit that soon after decision in Supreme Court in case of *People ex rel. Fursman* v. *City of Chicago*, 278 Ill. 318, school laws pertaining to the City of Chicago were amended by amendments known as the "Otis Law"; that section 138 of said law as so amended is in substance as set forth in Paragraph 4 of Complaint and that said Section was amended at recent session of the General Assembly limiting tenure of office of teachers, and providing that such tenure should be subject to retirement at age 65.

5—Admit that on or about June, 1925 an Act was passed by the General Assembly known as the "Mil-

ler Act'' and was approved by the Governor as set forth in Paragraph 5 of Complaint and applied to cities having a population exceeding 500,000, and provided for retirement of teachers and principals in substance as alleged in Complaint.

6—Admit that on April 8, 1925, defendant Board approved report of the then Superintendent of
172 Schools recommending that General Assembly pass an Act, but deny that the Act so recommended was similar to the ''Miller Law'' that was afterwards enacted.

7—Deny that after alleged approval of said proposed Act (paragraph 7 of Complaint) many conferences were held between representatives of the then Superintendent of Schools and representatives of the Law Department; deny that the Bill thereafter introduced in the General Assembly was drafted in the Law Department of the Board of Education, but admit that the Bill was afterwards introduced in the General Assembly by Representative Miller, and admit that the same was not approved by the Governor until May 19, 1926.

8—Admit that defendant Board on December 9, 1925, adopted ''Emeritus Rule'' as set forth in Paragraph 8 of Complaint.

9—Admit that suit in chancery was filed in the Circuit Court of Cook County, as set forth in Paragraph 9 of Complaint, and was there dismissed for want of equity and that the Appellate Court reversed the decision of the Circuit Court and directed that an order be entered reinstating teachers removed pursuant to ''Emeritus Rule.''

173 10—Admit that the "Miller Law" was amended by the Fifty-fifth General Assembly by amendment providing for voluntary retirement of teachers between ages 65 and 70.

11—Admit that amendment to "Miller Law" was reported to Board of Education by Superintendent of Schools March 9, 1927, and that in said report was included a written recommendation made by the principals of the school system.

12—Admit that on May 11, 1927, defendant Board authorized employment of an Actuary to investigate all phases of Bill then in General Assembly amending the "Miller Act" and that on May 25, 1927, they had employed Henry R. Corbett, Actuary, and recommended that his report be received.

13—Admit that following the decision of the Appellate Court in the case of *Armstrong* v. *Board of Education,* 247 Ill. App. 584, defendant Board reinstated teachers and principals who had been retired under "Emeritus Rule", except those who had reached retirement age as fixed by Miller Law, and paid to all such teachers their back salaries.

174 14—Admit that the Miller Law was amended by the Fifty-sixth General Assembly, which amendment became effective.

15—Admit that the Fifty-ninth General Assembly of Illinois adopted an Act entitled "An Act to amend Sections 1 and 2 and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals * * * and for the payment of retirement annuities,' approved May, 1926, as subsequently amended, and to repeal Section 3

of said Act." That said Act became law without the Governor's signature on July 12, 1935.

Admit that by the provisions of said Act Board of Education as soon as practical after the law becomes effective shall retire all teachers, principals, etc., 65 or more years of age and shall thereafter retire all teachers, etc., on attaining age 65. Allege that the Act as amended reduced annuities paid to persons retired pursuant to the Act from $1500.00 to $500.00 and reduced retirement age from 70 to 65 years.

175 16—Defendants admit that the Board of Education gave full consideration to the original Miller Act at the time it was passed and to subsequent amendments, and allege that it also gave due consideration to amendments adopted by the 59th General Assembly and filed with the Secretary of State July 12, 1935; allege that in considering last mentioned amendments it took into consideration that the amounts required to be paid to retired teachers who no longer render service had increased to such vast amounts that unnecessary and unreasonable burden was placed upon taxpayers of the School District.

Allege that in considering amendment adopted by the 59th General Assembly the Board took into consideration the fact that "Emeritus pensions or salaries" are payable out of Educational Purposes Fund derived by taxes levied for educational purposes; allege that during 1926, first effective year of Miller Law, Board expended $12,000 for "Emeritus pensions"; in 1927, Board paid $87,425; in 1928, $248,015.40; in 1929, $348,520.50; in 1930, $518,-

415.50; in 1931, $642,481.50; in 1932, $739,993; in 1933, $873,909.50; in 1934, this expenditure for which Board of Education or school children received no benefit increased to over $1,000,000.00, and amount actually expended was $1,000,906.87 and allege that it was necessary in January, 1935, before amendment to law became effective, for the Board to appropriate $1,125,000.00.

176 Allege that the Board in considering amendment also considered that in addition to "The Emeritus pension" there was provided by law another pension from which teachers received an annuity commonly known as "Public School Teachers' Pension and Retirement Fund" also maintained principally from money derived by taxation. (Par. 158, Sec. 154 (122) Cahill's Ill. R. S. 1935). Although teachers did contribute to fund, the Board in considering recent amendment to Miller Law took this pension fund into consideration and recommended to General Assembly and General Assembly did increase tax rate for that purpose and amounts of pensions to be paid under that Act. Allege that the Board also took into consideration that during 1933, 1934 and 1935 the maximum salary of an elementary school teacher teaching full time in the public schools of Chicago was $1912.50 and that this same teacher upon retiring would receive from the two "pension funds" a total of $2500.00 or $587.50 more per year than if working; that the salary for lower group of teachers for first year of service was $1127.50 so that a teacher retiring upon maximum salary performing no service received pension of $1372.50 more than the salary of lower group of teachers. Allege
177 that the Board also took into consideration that

due to financial condition of country and failure to collect taxes, it had been compelled to and had made substantial cuts in salaries of all employees, including teachers, and that as a result "Emeritus teachers" retired on pensions received pensions in larger amounts than large majority of teachers and employees performing daily service.

Allege that Board also took into consideration that retired teachers receiving pensions pursuant to "Miller Law," as amended, and pursuant to Teachers' Pension and Retirement Fund, as amended by 59th General Assembly, would receive pensions comparable favorably with largest pensions paid any other public employees in the State.

Allege that Board also took into consideration in considering amendment adopted by the 59th General Assembly that there were over 4000 young teachers, college graduates, educated by defendant Board pursuant to statute at taxpayers' expense, who had successfully passed examinations provided for in Section 138 of the School law and were holders of teachers' certificates entitling them to teach, many of whom had been waiting for over three years for assignments and who rightfully believed they were entitled to immediate employment in the pub-
178 lic school system of Chicago. Allege that defendants also took into consideration that these young women were better qualified to teach than the teachers affected by the amendment to the Miller Law who had passed age limit "where all government employees and all the employees in larger business houses are presumed to have become inefficient."

Allege that defendants also took into consideration report of Superintendent of Schools, portions

of which are set forth in paragraph 11 of Complaint, omitted portions of said report that the Board took into consideration being:

(2) Amendment will give schools relief from incapacitated teachers over age 60 and without increased cost since new teachers employed to take the place of those retiring will begin at lower steps of salary schedule and salary of new teachers and pension under this amendment will be less than salary of old teachers who retire under amendment.

(3) Comparing total amounts paid to teacher retiring at superannuation pension age on $1500 a year for 8½ years, (the expectancy of life at age 70) with another teacher retiring at age 60 on $700 a year for 14 years (the expectancy of life at that age) the Board would save nearly $3000 on teacher retiring at age 60 as compared with what the Board would pay same teacher if she remained in the service until 70 and then retired. This does not include salary while teaching through intervening 10 years, but simply the two pensions.

(4) Exact comparison of all factors involved impossible. If elementary teacher is retired during 60's, and an elementary teacher is added at minimum salary, the problem is simple, or if high school
179 teacher takes place of a high school teacher, or elementary school principal takes the place of a high school principal, the problem is simple, but as some teachers are added to system with many years of experience and these start somewhere in the middle of the schedule, it is impossible to give exact figures. Every method adopted for comparison shows cost of substituted teacher plus pension paid to teacher retired between 60 and 70 will be about equal to

what Board would have to pay to teacher thus retired if she had remained in the service at full salary up to the age of superannuation. (Full report, Exh. "F," above—Rec. 90, Abst. 64.)

Defendants then allege that in considering amendments that became effective July 11, 1935, they took into consideration salaries working teachers receive and reductions necessarily made in such salaries by reason of lack of funds to pay salaries and moneys retired teachers were receiving pursuant to "Miller Law," and pursuant to Teachers' Pension and Retirement Fund Law; also that no reductions had been made in amount of pensions and annuities received pursuant to "Miller Law," which facts, they allege, appear in two statements prepared by defendants which were submitted to each member of the General Assembly and which statements are then set up and are as follows:

180 SENATE BILLS 528 AND 529

Working Chicago Teachers Now Receive:	Per Annum	Retired Chicago Teachers Now Receive:	Per Annum
Max. Elementary salaries, $250.00 per mo. basic	$2,250.00	From Pension Fund	$1,000.00
		From Educational Fund	1,500.00
Less 15% reduction per mo. $212.50 net	337.50	Total payment to retired teacher	$2,500.00
NET annual salary for 9 mo. school year	$1,912.50	NOTE: Retired teachers do not and have not suffered any reduction in pension or so-called annuity.	

RESULT

	Per Annum
Retired teachers now receive	$2,500.00
Working elementary teachers employed every school day now receive	1,912.50
Excess amount received by retired teacher over and above that of elementary teacher in active service	$ 587.50

EFFECT OF ENACTMENT OF SENATE BILLS 528 and 529

	Per Annum
All retired teachers will then receive:	
From Pension Fund (same as at present)	$1,000.00
From Educational Fund	500.00
Total payment	$1,500.00

181 To the Honorable,

The Members of the House of Representatives,
Of the State of Illinois:

Senate Bills 528 and 529 (House Bills 1047 and 1049) amend the School Law that applies to Chicago only. These two bills were given an extended hearing before the Senate sitting as a Committee of the Whole and duplicates of them (H. B. 1047 and H. B. 1049) were referred to the Committee on Civil Service, which after a full hearing recommended that the bills do pass.

These Bills change the retirement age of teachers from 70 to 65 years. School authorities who are charged with the responsibility of conducting the

schools, are of the opinion that such changes will increase the efficiency of the teaching staff by supplanting teachers of this age with qualified young teachers, 4,000 of whom are awaiting assignment. Many have been on the list since 1929.

S. B. 528 amends the law which now provides for the payment of $1,500.00 per year as a so-called annuity to all retired teachers over and above their regular Pension of $1,000.00 per year received by them on retirement, from the Pension Fund. This total Pension and Annuity of $2,500.00 per year is $587.50 in excess of the maximum salary now paid to active elementary teachers who work every school day.

This amendment reduces the extra annuity or grant from the Board of Education to these retired teachers, from $1,500.00 to $500.00, but does not affect the Pension of $1,000.00 per year which they continue to receive, making a total which these retired teachers will receive, after the Bill passes, of $1,500.00 per year, being $1,000.00 per annum from the Pension Fund and an additional $500.00 per year as a gift from the Educational Fund.

The present law has been in force ten years. The first year, the Board paid out for this so-called annuity, a total of $12,000.00. Last year, the cost to the Board of Education was over $1,200,000.00—an increase of 1,000%. This money was paid by the Board out of its Educational Fund, thereby reducing the amount which it can use for current educational purposes, $1,200,000.00. These retired teachers give no service whatsoever to the schools.

During the past years, active teachers have suffered reductions in salaries amounting to 23½%. These retired teachers have never suffered a reduction and have been paid the full $1,000.00 from the Pension Fund and the full $1,500.00 in addition, from the Educational Fund, making a total received per year of $2,500.00.

The economy effected by the passage of S. B. 528 and S. B. 529 will materially assist the Board to continue to preserve every educational advantage to the pupils, to keep the schools open nine months of the year, to maintain teachers' salaries at the present rate and pay them, and to give proper consideration to the already overburdened tax-payer.

Respectfully submitted,

Board of Education of the City of Chicago

By James B. McCahey, President

William H. Bied
Wm. D. McJunkin
Ernst Buehler
Charles Fry
Paul Drymalski
Harry W. Solomon
Joseph J. Salat
Irwin N. Walker

Members.

182 17—Defendants admit that on July 28, 1926, 20 teachers and principals were retired by defendant Board pursuant to provisions of "Miller Law" on recommendation of Superintendent of Schools.

18—Admit that defendant Board on January 27, 1927, approved report of Superintendent of Schools and retired 14 teachers, including Plaintiff Chester C. Dodge.

Defendants deny that plaintiff Dodge since retirement on February 1, 1927, until September 1, 1935, received retirement annuity provided for by "Miller Act" of $1500 annually, but allege that he was paid the same up to date when "Miller Act" was amended and took effect July 11, 1935, and that thereafter he was paid annuity at the rate of $500 annually.

19—Deny that in every case in which one or more persons became subject to compulsory retirement, Board compulsorily retired as of August 1, 1927 and of February 1 and August 1, 1928 and each year thereafter to and including retirements as of Feb-
183 ruary 1, 1935, all teachers, principals, etc. upon their attaining respectively age at which it was in the "Miller Act" provided they should be so compulsorily retired.

Deny that Board of Education paid to each of such teachers, principals and other educational employees compulsorily retired under "Miller Act" annual retirement allowance of $1500 for the periods of their respective retirement allowances to and including July, 1935.

184 20—Defendants admit that plaintiffs named in paragraph 20 of Complaint were retired as teachers or principals as of dates alleged; deny they have been retired from active service of Board, but allege that they have been completely separated and retired as teachers or principals in the public schools

and have performed no service whatsoever since their retirement and that many of them left the State of Illinois.

Deny that all plaintiffs or any of them so compulsorily retired received retirement annuities of $1500 a year each to and including September, 1935, but allege that said annuity of $1500 per annum was paid to and including June, 1935.

21—Deny that after July 1, 1927 to and including May 15, 1935, defendant Board pursuant to Section 3 of "Miller Act" as amended in 1927 and in 1929, in compliance with provisions thereof retired from active service as voluntary retirements all teachers, principals, etc., as provided in Section 3, who were qualified thereunder upon their written requests; deny that such retirements or any of them in each instance became effective from date named in such request by each such teacher, principal, etc.

185 Deny that Board paid to all such teachers, principals, etc., so voluntarily retired under Section 3 of said "Miller Act", retirement allowances provided in said Section for age at which such teacher, principal, etc., so voluntarily retired up to and until September, 1935; admit that retirement annuities were paid in semi-monthly installments during preceding school year commencing September, 1934, and ending in June, 1935.

22—Admit that throughout period from July, 1927, to and including May 15, 1935, Superintendent of Schools from time to time presented to defendant Board reports recommending that in accordance with written requests, members of teaching force therein named be retired from service pursuant

to provisions of retirement law; that said reports specified names of teachers or principals, dates of
186 birth, length of service in the public schools; deny that in each instance defendant Board at the respective meeting at which reports were presented approved and adopted the reports and retired members of teaching force mentioned in said reports.

23—Defendants admit plaintiff George B. McClelland was retired pursuant to Section 3 of the "Miller Law", October 1, 1928; Nellie C. Callahan was retired pursuant thereto at meeting of December 14, 1932; Caroline M. Dean was retired pursuant thereto on May 15, 1935; Catherine L. Baird was retired pursuant thereto April 27, 1935. Defendants deny that Laura Tierney was retired in June, 1933, but allege that she was retired August 9, 1933.

Defendants admit that Nellie T. Woulfe was retired August 23, 1933; deny that Mary L. M. Corbett was retired February 1, 1933, but allege she was retired December 26, 1934; defendants deny that Lillian F. Dougherty was retired pursuant to said Section 3 in June, 1933, but allege that she was retired on August 9, 1933.

187 24—Defendants deny that it appears from official proceedings of Board covering period July 1, 1927 to and including May 15, 1935 that practice of superintendent of schools and of defendant Board had been uniform; that in all instances written requests from teachers over 65 have been immediately complied with; that the Board and Superintendent of Schools have, as a matter of course, acted favorably upon such requests; that the Board has not

sent any such requests to a Committee of the Board or deferred action thereon, but on the contrary, allege on numerous occasions recommendations of Superintendent of Schools for transfer of teachers pursuant to various sections of the "Miller Law" including Section 3, have been referred to committees of the Board, temporarily deferred, referred to standing committees of the Board, and referred to the Attorney for his opinion thereon.

Defendants deny that there has been any uniform or unvaried practice over period mentioned in the Complaint showing that in any one instance the Board or Superintendent of Schools considered transferring of teachers pursuant to "Miller Law" as mere ministerial act but allege Superintendent of Schools has given consideration to and investigated every application made by teachers for trans-
188 fers pursuant to Section 3 of Act, and made thorough examination of facts upon which application is made; that he has in many cases requested opinion from the Attorney relative to what action he should take.

Defendants allege that the Board of Education has given due consideration to recommendations of Superintendent of Schools regarding retirements pursuant to Section 3 of the Act, and that Board on numerous occasions, in order to investigate recommendation of Superintendent, has deferred action to later meetings and has referred recommendations to the Attorney for his opinion and to standing committees of the Board.

Defendants deny that Board had no discretion as to granting requests for retirement under provisions of Act, but that it was its duty to carefully

consider all applications for retirement, and that Board did give all applications due consideration.

189 24½—Alleges that amendment to "Miller Law" and amendment to Section 138 of "Otis Law", were introduced at regular session of 59th General Assembly, May 22, 1935, entitled Senate Bills Nos. 528 and 529 respectively; that each was read for first time in Senate May 22, 1935 and advanced to second reading; read for second time May 23, and advanced to third reading; read for third time June 4, 1935, and passed on roll call and sent to House of Representatives. Received in House June 5, 1935; first reading June 6 and advanced to second reading; second reading June 12, 1935, and advanced to third reading; third reading June 13, 1935, in House of Representatives and passed on roll call. On that day motion to reconsider made and tabled. That each of said Bills was ingrossed, signed by the President of Senate and Speaker of House and sent to Governor for approval; that Governor did not sign or veto either of them; that they were thereafter filed June 12, 1935 in the office of Secretary of State;
190 that Board of Education was advised of each of said Bills and its members in person attended various sessions of the General Assembly and recommended to various members thereof the passage of said Bills.

Allege that defendant Board and defendant members thereof had been advised that dual pension system in force was fundamentally unsound and believed that passage of Senate Bills 528 and 529 would improve existing conditions relative to pensions; that in 1931 pension conditions of Board of Education and necessity of amendments to pension

laws had been discussed by members of said Board and members of General Assembly of Illinois and at meeting of said Board held June 8, 1931, for purpose of receiving and considering an audit requested by the Educational Committee of Illinois Senate, Chairman of that committee addressed Board and advised it as follows:

That sub-committee of Education Committee made no demand on Board to make this survey. Sug-
191 gests, however, that survey be made; that education system of State is a creature of Legislature maintained by taxes. In Chicago rate of taxation is fixed by Legislature; that Legislature and taxpayers have right to know how money is expended. There has been criticism about some expenditures. Legislature thought disinterested Audit Company should make a survey and make that suggestion to Board of Education. The Board cooperated and survey has been made and by Audit Company which has no personal interest in matter. Investigation made as to standing of that company and report is ready and has been distributed this morning. That he is going to ask Secretary of Committee, Senator Lee, to read report to the Board of Education. Senator Charles Lee then proceeded to read report of Audit Company of Cleveland.

Allege that Senator Lee then read the report which contained survey of financial condition of Board and made suggestions relative to economies; that that report contained the following:

192 That in previous section salaries of teachers in active service discussed; that in that connection, for comparison, consideration must also be given to pro-

vision made for teachers who after years of useful service are eligible for retirement; the General Assembly of Illinois has dealt with that subject in most generous manner.

Under Chicago Public School Teachers Pension and Retirement Fund Act effective since 1909, teacher after 25 years' service entitled to annuity of $800, and in addition, $20 per year for each additional year's service until maximum of $1000 reached. Source of such revenue $10 per year from each teacher in service 4 years or less; $15 per year from teachers in service 8 years or less; $25 per year from teachers in service 12 years or less; $50 per year from teachers in service more than 12 years. Also from taxes.

Tax of ¼ mill with provision that if same does not produce income exceeding twice amount paid by teachers, Board shall make up deficiency from educational fund.

In addition to this pension scheme, Board is obligated under "Miller Act", effective since 1927, to carry retired teachers on its pay roll for life under sliding scale arrangement. Teachers retiring age 65, $1000; 66, $1100, and rising to $1500 at age 70. No contributions by teachers. Requirements each year set off in budget and paid out of educational fund. In reality, it is a deferred salary and not a pension.

Nothing could be more chaotic than this dual arrangement. Both schemes fundamentally unsound. Report of Director of Trade and Commerce to Governor in December, 1930, after examination of these benefit funds should be matter of grave concern

to Board, teachers and taxpayers of Chicago. Requirements under "Miller Act" in excess of half million dollars and predicted by Director of Trade & Commerce that by 1934 requirements will be in excess of $1,200,000. In other fund, a net deficiency of $37,851,000 and if amortized over period of 40 years it will be necessary to make levy that will produce $2,523,000 annually. Board undoubtedly aware of its inability to keep up its excess payments. Liability today is $650,000.

These benefit funds holding out false promises to thousands of teachers—promises which can never be fulfilled—financial involvements created by this muddle should prompt Board to give subject immediate consideration. One of these systems should be abolished and in place thereof should be established plans that can be financed and will not be headed for the rocks. (From proceedings of Board June 8, 1931, pages 1882-1883.)

193 24¾—Defendants allege that dual pension system so severely criticized by Education Committee of Illinois Senate was due to statutory provisions which provided for two separate and distinct pensions to be paid to each teacher retired from active service and that Senate Bills 528 and 529 were recommended by them as remedy for condition that Cleveland Audit Company defined as a "chaotic arrangement fundamentally unsound."

25—Admit that Elmer E. Burns made application to Board on May 31, 1935 to be retired pursuant to provisions of Section 3 of "Miller Law"; that Superintendent of Schools reported said request to Board, but deny that Board in acting upon said

report departed from any usual custom. Deny that there was any custom relative to acting upon reports of Superintendent of Schools. Allege that Board acts upon each report as circumstances require.

Allege that said request for retirement was made while Senate Bills 528 and 529 were pending before Senate, and that defendant Board was not advised of said request until after each of said Bills had passed Senate and House of Representatives and been delivered to Governor for his signature.

26—Admit that Azile B. Reynolds requested to be retired from active service pursuant to Section 3 of "Miller Law", but alleges that said request was
194 made when each of said Bills was pending in the General Assembly, and each had passed Senate; admit that Archibald Paterson requested defendant Board to be retired pursuant to Section 3 of "Miller Law"; allege said request was made June 17, 1935, after amendment adopted by both Houses and General Assembly, repealing said Section 3. Defendants admit that Superintendent of Schools thereafter presented to Board of Education report recommending that certain teachers therein named be retired pursuant to Section 3 of "Miller Law"; allege that at time said report was presented to defendant Board, Section 3 had been repealed by Senate and House of Representatives, and that final vote on repealing said Section was taken on June 13, 1935, long prior to said report being presented to defendant Board.

27—Admit that after July 12, 1935, defendant Board complied with provisions of statutes of State

of Illinois enacted by passage by General Assembly, of Senate Bills 528 and 529; deny that such acts were arbitrary, illegal, void and unconstitutional; deny that such acts take away property without due process of law; deny that said acts were an attempt to impair obligation of contracts.

195 27½—Allege that public schools of Chicago closed June 14, 1935, for summer, and that teachers were not employed for summer months; that for many years schools operated on a ten month basis, but that due to lack of funds, Board of Education on May 27, 1933 reduced the school year from ten months to nine months, and that at all times since then public schools of Chicago have been maintained for nine month period each year.

28—Admit that Board of Education prints and publishes reports of its proceedings and that said reports are accessible to all members of teaching force.

29—Admit that on January 17, 1935, Board adopted resolution termed "annual school budget", in and by which defendant Board appropriated sums of money required to defray necessary expenses and liabilities of Board.

Allege that said "Annual school budget" was
196 adopted pursuant to provisions of Section 135½ of Act entitled "An Act to establish and maintain a system of free schools." That by terms of said Section, appropriations are not to be construed as approval by Board of any liabilities, but only to be regarded as provision of funds for payment thereof when liabilities have been found valid and legal obligations against Board.

Admit that on page 531 of "annual school budget" appears item

"2—Retirements (Miller Law).....$1,125,000.00"

That on page 534 of "annual school budget" appears

"Y Retirements—Miller Law .....$1,125,000.00"

That on page 539 of "annual school budget" appears

"Retirements—Miller Law .....$1,125,000.00"

197 Paragraph 30. Deny that during the period from date that "Miller Act" went into effect after its signature by the Governor until April 30, 1935, 227 teachers, etc., have been compulsorily retired; deny that of such 227, 184 are living, as alleged in Complaint and that 43 have died; deny that 184 so living April 30, 1935 have been receiving retirement allowance of $1,500.00 annually from retirement until April 30, 1935; deny that except as to those since died, they have received retirement allowance, as alleged, until September, 1935; deny that the persons so alleged to have been retired are entitled to receive same for remainder of their respective lives.

Deny that during period Section 3 of "Miller Act" has been in force up to April 30, 1935, there have been retired under Section 3, 830 teach-
198 ers, etc.; deny that 112 of such employees so alleged to have been retired have died prior to April 30, 1935, leaving 718 still living; deny that of said 830, 291 retired at age 65; deny that of such 291, 268 were living April 30, 1935; deny that 23 of such teachers, etc., have since died; deny that said 268 were receiving annuity of $1,000.00 a year and

that they or any of them were entitled to continue to receive same annuity during the remainder of their lives; deny that of such 830 alleged to have voluntarily retired, 123 retired at age 66; deny that 103 of such 123 were living April 30, 1935 and that 20 have died; deny that said 103 persons, except those who have died, were until September, 1935 receiving $1100.00 a year as retirement annuity under Section 3, and deny that they or any of them are
199 entitled to receive same annuity for remainder of their lives; deny that of said 830 alleged to have voluntarily retired, 122 retired under Section 3 at age 67; deny that of such 122, 9 have died and that 113 received from dates of respective retirements until September, 1935, retirement annuities of $1200.00 per year; deny that any of them are entitled to receive said amount for remainder of their lives.

Deny that of said 830 alleged to have voluntarily retired under Section 3, 96 retired at age 68, and deny that 81 thereof were living on April 30, 1935, and deny that 15 thereof have died; deny that said 81, except those who have died, have received retirement annuities from dates of retirements until September, 1935, in amount of $1300.00 per year; deny that they or any of them are entitled to receive such annuities or any part thereof for remainder of their respective lives; deny that of said 830 alleged to have voluntarily retired under
200 Section 3, 96 retired at age 69; deny that 84 thereof were living on April 30, 1935; deny that 12 of said persons died; deny that of said 84, except those who have died, each received retirement annuities in amount of $1400.00 per year from dates

of respective retirements until September, 1935; deny that they are entitled to receive said annuities, or any annuities, for the remainder of said respective lives; deny that of said 830 alleged to have voluntarily retired under Section 3, 102 voluntarily retired at age 70 or over; deny that of such 102 so alleged to have retired, 69 were living on April 30, 1935 and 33 have died; deny that said alleged 69 persons so retired, except those who have since died, have received from dates of respective retirements until September, 1935, annuities under Section 3 of said Act of $1500.00 a year; deny that they
201 or any of them under Act are entitled to receive any annuity or pension whatsoever during remainder of respective lives.

Defendants deny that it appears from records of Board of Education that in June, 1935 there were recommended for voluntary retirement by Superintendent of Schools under Section 3 not less than 175 persons; deny that such recommendations were placed before the Board and called to attention of defendant Board at regular meeting, June 26, 1935; deny that it appears from said alleged recommendations of Superintendent of Schools that said alleged 175 persons, or any of them, were entitled to be voluntarily retired under said Section 3; deny that only action taken on such recommendations by defendant Board of Education was to refer such communication to General Committee; deny that General Committee never reported further action on said alleged report; deny that all the alleged persons whose names appear on said alleged report made written requests for voluntary retirements; deny that all of said alleged persons whose names

appear on said alleged report were eligible and had
202 met all requirements of law then in force; deny that they were entitled to be voluntarily retired; deny that said alleged persons whose names appeared on said alleged report and such alleged recommendations were purported to be compulsorily retired; deny that Board had no right or authority to retire said 175 persons as charged in said Complaint; deny that said persons, or any of them, were entitled to, or that Board was empowered to retire any of said alleged persons upon a retirement allowance for life.

Paragraph 31. Defendants admit that defendant Board of Education paid to persons retired pursuant to "Miller Law" the annuity pensions required to be paid pursuant to said Law prior to the Act of the Legislature effective in July, 1935; admit that after said amendment became effective said Board paid to each of persons so retired the amounts required to be paid under law as amended, but deny that Complainants were or are entitled to receive further sums of money as pensions or an-
203 nuities; allege that amounts so paid were tendered to and paid to complainants and other teachers similarly situated in full of all pensions or annuities required to be paid under "Miller Law."

Paragraph 32. Defendants deny that there is now in preparation "annual school budget" for 1936, but admit that defendant Board will be required to adopt in the first fiscal quarter of the year 1936 "annual school budget" for that year, and in same will be required to appropriate sufficient money to pay necessary expenses and liabilities of Board to

be paid or incurred during that year, and that it will be required to, and will, adopt a resolution certifying amount of taxes that Board requires to be levied upon equalized assessed valuation of taxable property in City of Chicago for school purposes, but deny that it will or should be required to appropriate and set aside money sufficient to pay pension annuities required to be paid prior to July 11, 1935, and deny that it will levy or cause to be levied taxes in sufficient amounts to pay annuities or pensions in amounts required to be paid prior to amendments to "Miller Law" effective July 11, 1935.

204 Paragraph 33. Defendants deny that teachers who have been retired pursuant to said Act have held themselves as subject to call of Superintendent of Schools of City of Chicago for consultation and advisory service; deny that they have been and are ready, willing and able to give such consultation and advisory service; deny that plaintiffs who have been voluntarily retired pursuant to Section 3 of said Act have been subject to call of said Superintendent or of defendant Board for consultation and advisory service, and have been and are ready, willing and able to give same; deny that pursuant to and as result of alleged compliance with requisites as to length and terms of service and acceptance of provisions of "Miller Act" plaintiffs have become entitled to contractual or quasi-contractual rights therein, and deny that they are entitled to receive for life retirement allowances as alleged in Paragraph 33 of Complaint.

Defendants deny that plaintiffs compulsorily retired, as set forth in Complaint, or those retired upon their application, have rendered any service

whatsoever to defendant Board or have offered or tendered their services in any manner or form; deny that there is any contractual or quasi-contractual relationship between complainants, or any of them, and defendant Board.

205 Paragraph 34. Defendants deny that amendment of "Miller Law" effective July 11, 1935 affected only teachers, principals and educational employees who might thereafter be retired pursuant to provisions of said Act.

Defendants deny that Section 4 of Chapter 131, Revised Statutes of Illinois, has any application to amendment to the "Miller Law," effective July 11, 1935, or is in any way pertinent to issues involved herein.

Defendants deny that "Miller Law" in force prior to July 11, 1935 was intended to provide deferred compensation for services rendered by persons retiring after Law became effective, but allege that amounts to be paid, and that were paid pursuant to said "Miller Law" are pensions, mere gratuities springing from the graciousness and appreciation of the sovereign power, that may be given or withheld at the pleasure of such power.

Defendants deny that amendments to "Miller Law" effective in July, 1935 are in violation of Section 2 of Article II and Section 14 of Article II of Illinois Constitution and of Fifth Amendment to and of Section 10 of Article I of the United States
206 Constitution; deny that said amendment or amendments were invalid and unconstitutional; deny that said amendments attempt to or take away any vested rights or property without due process of law; deny that said amendments impair obligation of contract.

Defendants allege that 1935 Amendment to "Miller Law" repealed said Act as was in effect prior thereto; that said amendment is a full and complete Act in itself, is an enabling Act except insofar as it repeals all powers granted to the Board under previous "Miller Law."

Defendants allege Section 3 of said Act was repealed *in toto*.

Paragraph 35. Defendants deny that plaintiffs, or any of them, are without remedy in premises in a court of law; deny that plaintiffs have any remedy herein; deny that bill herein is filed to avoid a multiplicity of suits or will prevent a multiplicity of suits, but allege that remedy of plaintiffs, if any they have, is in a court of law.

Paragraph 35½. Defendants allege that after the matters and things alleged in Complaint, and before commencement of this suit, to-wit: on August 7, 1935, in Circuit Court of Cook County, John E. Groves and Mary E. Stanton filed their complaint in Chancery No. 25-C-12886, against this defendant, alleging that John E. Groves had been a teacher in City of Chicago for over forty years last past and taxpayer in said City for over twenty years; that his salary for entire year 1935 is $2,817.00 after deducting his contributions to pension fund, and is payable in nine monthly installments, $313.00 each; that Mary E. Stanton will be age 66 November 13, 1935; that she had been a public school teacher nearly 45 years and her sal-
207 ary is $2,103.75 after deducting her contributions to pension fund; that complainants herein filed com-

plaint in their own behalf and in behalf of other taxpayers of City of Chicago who wish to join as additional complainants, and in behalf of all public school teachers and principals recently forcibly retired from service who wish to join as complainants; allege that the complaint then alleges that complainants and all public school teachers in City of Chicago enter service of Board of Education by contract; that relation between teachers and Board is contractual and is so recognized by certain sections of Statute set forth in Complaint.

Paragraph 36. That the Complaint then alleges that prior to April 20, 1917, teachers were elected and appointed annually; that favoritism at that time was shown in election of teachers and that General Assembly, on April 20, 1917, enacted "Otis Law" by provisions of which teachers were granted tenure of office; that their appointments as teachers became permanent without formal action of Board
208 after serving probationary period of three years; that Complaint alleges that teachers are in no sense public officers; are not civil service employees as they are exempt from civil service, but are contract employees; that teachers in employ of Board April 20, 1917 who have been continuously employed since, have contracts that became permanent and indefinite by provisions of that Act and cannot be removed except for cause, and have vested rights under statute; that their rights have become vested property rights by operation of statute, and that repeal or modification of statute cannot legally divest complainants of vested property rights acquired under statute; that the complaint further alleges that besides permanent indefinite contract that com-

plainants have with the Board is a yearly contract which pertains to salaries for each fiscal year, and also to length of the fiscal year, which shall not be
209 less than nine months; that salary of complainant Mary E. Stanton was fixed in annual school budget for nine months at rate of $233.75 per month, and salary of complainant Groves was fixed at $313.00 per month for like period; that complainants accepted yearly salary schedule, performed service after annual school budget adopted, and legally expected to be paid said rates for nine months of year 1935;

Paragraph 37. That complaint then alleges that complainants were contributors to Chicago City Pension Fund, have contributed to that fund for over twenty-five successive years, and are each entitled to withdraw from service of schools and receive $1,000.00 a year for remainder of their lives; that prior to July 1, 1935 there was in force in State of Illinois applicable to public school teachers of Chicago a state pension fund; that teachers sixty-five years old could retire from service and receive from said fund the sum of $1.000.00 annually, and that said pension fund increased at rate of $100.00 per year, and on reaching age seventy, teacher could retire and receive from said State Pension Fund $1500.00; that said two pension funds would amount to $2500.00 a year for life; that combined pensions of $2500.00 is none too large, and in many instances and cases far too small for pensioner's actual needs.

210 Paragraph 38. That complaint then alleges passage at last General Assembly of Senate Bill No. 528 an amendment to School Law; that the Bill is

set forth in the complaint and is now the Act of the General Assembly, which is complained of in the case at bar. The complaint then sets forth amendment to Section 138 of School Law complained of in the case at bar. The complaint then charges that said two Acts of the Legislature are void and of no legal effect and can only apply to teachers whose probationary period of three years has not lapsed. The complaint then alleges that 242 teachers, principals and assistant superintendents were retired July 24, 1935, pursuant to provisions of said amendments. Complaint then charges that said Acts of General Assembly, the acts complained of in case at bar, impair obligation of contracts and contract rights, deprive complainants of property without due process of law, and are contrary to and in direct conflict with and violation of Constitution of United States and Illinois Constitution of 1870; that they violate Article I, Section 10 of United States Constitution; that they violate Article V of United States Constitution; that they violate Section 2 of Article II of Constitution of 1870, and that they violate Section 14 of Article II of Constitution of 1870.

211 Paragraph 39. That complaint then charges that amendment to Retirement Laws passed at last General Assembly as set forth in complaint are void and of no effect because inhabitants of the State have not been granted proportionate representation in the Legislature; that complaint then charges that amendments in question are unfair and discriminate against teachers and are illegal and void.

Paragraph 40. That complaint then charges that in order for a so-called retired teacher to obtain

meager State pension of $500.00 a year as provided in amendment in question, she is still at call of Superintendent of Schools and cannot safely embark in any kind of business or other means of earning a livelihood, and that conditions attached to amendment made entire law unfair, unjust, unequitable and void.

Paragraph 41. Complaint alleges that suit was filed to prevent multiplicity of suits; that complaint then prayed for injunction restraining Board of Education, their attorneys, solicitors, employees acting or assuming to act under authority of the Board, from carrying out or attempting to carry out order of July 24, 1935 retiring the complainants and other teachers, and prayed for an order directing the Board and the Superintendent of Schools to restore the teachers to their former positions.

212 Paragraph 42. Defendants allege that thereafter complainants in said cause appeared before Judge Phillip Finnegan, one of Judges of Circuit Court of Cook County, and moved for an injunction as prayed for in the complaint, and defendant Board of Education thereupon filed its motion in writing to dismiss said complaint and as grounds for said motion defendants set out that plaintiffs by complaint did not state a case as entitled them in a court of equity to any relief from and against defendants; that it appeared by said complaint that no contractual or vested rights were involved; that courts have no power to inquire into motive of General Assembly; that Acts of General Assembly which plaintiffs sought to have declared unconstitutional did not violate any provisions of Constitution of

State of Illinois or the Constitution of the United States.

Paragraph 43. Defendants allege that complete hearing of said cause on said Bill of Complaint was had before Judge Finnegan, and after said hearing in open court, said Judge took cause under advisement and plaintiffs in said cause and defendants therein, who are defendants here, each filed written briefs and thereafter said Judge Finnegan denied motion of plaintiff for temporary injunction and sustained motion of defendants to dismiss complaint, and thereupon, on motion of plaintiffs, plaintiffs were given leave to file amended complaint and defend-
213 ants granted leave to answer or file motion to dismiss within twenty days; that plaintiffs thereupon filed amended complaint which was in substance the same as original complaint filed in said cause but in addition to allegations of original complaint, it was alleged that pension laws applicable to teachers in Chicago were approved by the Legislature on May 31, 1895; that various sections of Pension Law are set forth in amended complaint.

Paragraph 44. That amended complaint, in addition to allegations of original complaint, alleges there was in force in Illinois prior to July 1, 1935, "State Annuity Fund," and that teachers sixty-five years of age could retire from active service and receive from said Fund through Board of Education $1,000.00 annuity and that rate of said pension increased $100.00 a year thereafter, so that on reaching age seventy teacher could retire from active service and receive from State annuity fund $1500.00 per annum for life; that neither the sum received from the City or from the annuity from

the State are intended as bounties or gratuities, but as compensation for services previously rendered for which full adequate compensation was not received at the time services were rendered. In other words, pay withheld to induce long continued and faithful service on part of experienced teachers.

214 Paragraph 45. That amended complaint then sets forth passage of Senate Bill No. 528 amendment of Emeritus Law adopted at 1935 Session of General Assembly of Illinois, the Act which reduces the pension which complainants in said cause term the State Pension, from $1500.00 a year to $500.00 a year, the Act of the General Assembly complained of in the case at bar; that amended complaint charges that said compulsory retirement laws impair vested rights to permanent tenure acquired prior to passage of those laws and impair obligations of the complainants and cannot have retroactive effect; that amended complaint charges that Acts of General Assembly in question are unconstitutional and void as violation of the ordinance of 1787 providing for a government of territory comprising present State of Illinois, in violation of Article IV, Section 4 of Constitution of the United States, are in violation of Section 6, Article IV of Illinois Constitution, are in violation of Section 5 of Article IV of Illinois Constitution.

Paragraph 46. That amended complaint further alleges that compulsory retirement law complained of does not contemplate complete severance of relations between retired teachers and Board of Education, but only for a retirement from active classroom duties with consequent loss of pay and transfer to perpetual duties of being consulted by Superin-

tendent of Schools and of furnishing him with advice for a niggardly annuity of $500.00 a year.

215 Paragraph 47. That amended complaint further alleges that original "Otis Law" which became effective April 20, 1917, became part of teachers' contracts of employment.

That the prayer in amended bill is in substance the same as in original bill. It prays for injunction restraining Board of Education from carrying out order of Board of July 24, 1935, and for an order directing defendants to reinstate teachers retired pursuant to Acts of the Legislature.

Defendants allege that defendants in said cause, who are defendants in this cause, filed their written motion to dismiss said complaint and based said motion upon the same grounds as their motion to dismiss filed to original complaint.

Paragraph 48. Defendants allege that said amended complaint is pending and undisposed of and involves same issues as are involved in the case at bar; that the case of *Groves, et al.* v. *Board of Education, et al.*, Circuit Court No. 35-C-12886, involves validity and constitutionality of Act of the General Assembly amending the "Emeritus Law," the Act that became effective July 11, 1935; that a determination of said cause on said original complaint by the Honorable Phillip Finnegan was and is an adjudication of all issues in the case at bar.

216 Defendants deny that plaintiffs are entitled to relief or any part thereof in said complaint demanded, pray the same advantage of this answer as if they had pleaded or moved the Court to dis-

miss the complaint, and pray to be dismissed with their reasonable costs and charges in this behalf, etc.

Then follows the signature of the said Board of Education of the City of Chicago; of James B. McCahey, President and member thereof; Ernst Buehler, Vice-President and member thereof; of Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, William H. Bied, Mrs. W. S. Hefferan, members of said Board; Frank H. Landmesser, Secretary of said Board; and Harry H. Bracket, Auditor of said Board all by Richard S. Folsom, their Attorney; affidavit of R. S. Folsom that he is Attorney for defendants, has read the foregoing Answer, knows the contents thereof and that same is true. Sworn to November 20, 1935.

218 Notice signed by attorney for plaintiffs (filed December 10, 1935) of motion on that date for leave to file written motion to strike answer of Board of Education of City of Chicago, *et al.*, defendants, with receipt of copy by attorneys for defendants.

220 Order entered December 10, 1935 granting leave to plaintiffs to file instanter written motion to strike answer of Board of Education of the City of Chicago, *et al.*, defendants, and setting said motion to strike for hearing on Monday, December 16, 1935.

222 Motion to strike answer filed December 10, 1935. Plaintiffs move to strike answer to complaint filed by Board of Education, *et al.*, defendants, except as to admissions therein contained of facts alleged in complaint and for reasons for said motion show:

First: That answer is uncertain, vague, insufficient and does not state facts showing defendants have any defense to plaintiffs' cause or any part thereof.

Second: That answer sets forth matters that are irrelevant and immaterial and constitute no defense to suit or any part thereof.

Third: That defendants in answer admit the retirement, prior to July 11, 1935, pursuant to provisions of Miller Act in force prior to such date, of plaintiffs, Dodge, Armstrong, Baird, Whigam, Cook, Loomis, Corbett, McClelland, Callahan, Morse,
223 Keen, Coddington, Toole, Dean, Dougherty, Tierney and Woulfe; admit that applications by written requests for retirement were made to defendant Board of Education by plaintiffs Paterson, Reynolds and Burns before July 11, 1935, and do not deny that said last three plaintiffs, at the time of such written requests, had fulfilled and complied with all qualifications for voluntary retirement under Miller Act as same then in full force and effect.

Fourth: Answer does not deny any material allegation of complaint and does not set forth new or additional facts either in defense thereto or in confession and avoidance thereof.

Fifth: That only matters in answer set forth attempting to show that plaintiffs or any of them are not entitled to the relief sought are conclusions of law and argumentative statements, not setting forth facts sufficient to constitute a defense to suit or to any part thereof.

Sixth: That allegations in paragraphs 35½ to 48 of the answer as to another suit pending in chancery

in the Circuit Court of Cook County against said defendants, brought by John E. Groves and Mary E. Stanton as plaintiffs, No. 35-C-12886, setting forth at length a number of the allegations contained in the complaint in such other suit, show on the face of such allegations that such other suit is not brought for same relief as that prayed for in this cause and does not involve the same questions or same alleged rights as are involved in this suit; the said suit in the Circuit Court, as appears from said paragraphs of answer, is one in which it is claimed that defendants have no right under Miller
224 Act as amended in 1935 to retire at age 65 plaintiffs to said suit, which question or claim is not involved in this suit; the only question involved in this suit is right of plaintiffs and others similarly situated, who were retired prior to effective date of 1935 amendments of Miller Act, to continue to receive annuities which it was in Miller Act, as in effect at time of their retirements, provided they should receive for life, and the right of certain other plaintiffs and others similarly situated, who were qualified for voluntary retirement and made written requests therefor prior to time when 1935 amendments became effective, to be so voluntarily retired under said Act as it existed prior to July 11, 1935 and to receive annuities provided for in case of such retirements under the Law as it existed at the time said written requests for voluntary retirement were made.

Sixth (a): That, as appears from said allegations in answer, the only question involved in said Circuit Court case is validity of Miller Act as amended in 1935, insofar as it reduces compulsory

retirement age of teachers and other educational employees to age 65; in suit at bar, the only questions involved are —(1) whether said amendments of 1935 affected rights of plaintiffs, theretofore retired under Miller Act, to continue to receive annuities provided for by said Law as it was in full force and effect at time of their respective retirements, and rights of plaintiffs, who made written requests for voluntary retirements before said amendments went into effect, to be so retired and receive such annuities; and (2) if under said amendments their rights are affected, whether said amend-
225. ments, insofar as they affect their rights and reduce amounts to which they are entitled, are constitutional.

Sixth (b): That, as appears from complaint herein and from allegations of answer as to said Circuit Court suit, the suit at bar is on behalf of teachers and other educational employees heretofore retired under Miller Act before its amendment in 1935, and on behalf of those who, being qualified for voluntary retirement under said Act in force prior to July 11, 1935, made written requests to defendant Board prior to that date for voluntary retirement; Circuit Court suit is brought on behalf of persons who do not desire to be retired, made no request therefor, but on the contrary, claimed they should not be retired and should be allowed to continue in active employment as teachers of defendant Board of Education.

Sixth (c): Plaintiffs in case at bar, and persons similarly situated to them, are not in the same situation, do not have one common right or one common interest with plaintiffs in said suit of *Groves, et al.*

v. *Board of Education*, pending in Circuit Court of Cook County.

Wherefore, plaintiffs pray that all matters in said answer, except admissions therein of allegations of complaint, be stricken and that plaintiffs be granted the relief in said complaint prayed for against said defendants for failure to file an answer setting up a defense to this action. Chester C. Dodge, *et al.*, Plaintiffs, by Allan J. Carter, their attorney.

226 Affidavit of Allan J. Carter that he is Attorney for Chester C. Dodge and the other plaintiffs, and is their duly authorized agent in this behalf; that the foregoing motion to strike answer of Board of Education, *et al.*, defendants, is not interposed for purpose of delay, and in his opinion said motion is well founded in law. Jurat, dated December 9, 1935.

228 Order entered December 16, 1935 (filed December 17, 1935), denying motion of the plaintiffs to strike the answer of the defendants and granting leave to plaintiffs to reply in five days.

230 Reply (filed December 18, 1935) to answer of Board of Education of City of Chicago, *et al.*, defendants. The plaintiffs, for a reply to said answer, say:

1. Plaintiffs reserve all rights of exception to said answer for insufficiency and all rights raised by and based upon the motion to strike said answer, heretofore filed, as in said motion set forth and as set forth upon the hearing of said motion.

2. As to the allegation in last sentence of paragraph 15 in said answer, plaintiffs deny that Miller

Act as amended in 1935 reduced the annuity paid to persons retired pursuant to the Act or affected in any way annuities payable to persons who were retired prior to effective date of said amendments of 1935, or who were qualified for voluntary retirement and had made written request for retirement under said Act prior to the effective date of said amendments.

231 3. Deny allegation in Paragraph 16 of Answer that amounts required to be paid to retired teachers under Miller Act who no longer render service had increased to and was increasing to such vast amounts that unnecessary and unreasonable burden was placed upon taxpayers of the School District.

3a. As to allegations in Paragraph 16 of Answer that in years 1926 to 1934, inclusive, amounts expended by defendant Board for annuities under Miller Act were as therein specifically set forth and as to allegation that it was necessary in January, 1935 for Board to appropriate the amount therein alleged, plaintiffs have no information or knowledge as to the truth thereof sufficient to form belief and insofar as material to issues in cause, demand strict proof.

3b. As to allegation in Paragraph 16 of Answer that defendant Board took into consideration fact that during years set forth, an elementary teacher teaching full time in Chicago public schools received maximum salary as therein alleged, plaintiffs have no information nor sufficient knowledge upon which to form belief as to whether a fact, and insofar as material, demand strict proof; deny allegation in Paragraph 16 of Answer that such teacher would

upon retiring, receive from the "two pension funds" a total of $2500 a year; allege that amount is maximum which any such teacher could have received from such pension and retirement annuity, provided
232 such teacher were compulsorily retired at age 70 and entitled to maximum pension under Pension Law.

3c. Plaintiffs have not sufficient knowledge or information to form a belief as to whether allegation in Paragraph 16 of Answer that defendant Board was compelled by financial condition of country and failure to collect taxes, to make substantial cuts in salaries of all employees, including teachers, or whether as therein alleged, teachers retired on pensions were receiving pensions in larger amounts than a large majority of teachers and employees performing daily services, and demand strict proof insofar as material.

3d. As to allegations in Paragraph 16 of Answer that teachers receiving pensions pursuant to Miller Law as amended and pursuant to Teachers' Pension and Retirement Fund as amended would receive pensions comparable favorably with largest pension paid to other public employees in state, and allegation therein that over 4000 young teachers who had successfully passed examinations provided by school law and who rightfully believed they were entitled to immediate employment as teachers in school system of Chicago, and as to allegation that such young women were better qualified to teach than teachers affected by the amendment complained of, and as to allegation that reductions in salaries of working teachers were necessary because of lack of funds to pay salaries and moneys that retired teachers were

receiving pursuant to Miller Law and Teachers' Pension and Retirement Law, plaintiffs have no in-
233 formation or sufficient knowledge upon which to form a belief, and insofar as material, demand strict proof.

3e. Plaintiffs have no information or sufficient knowledge upon which to form a belief whether the two statements referred to in Paragraph 16 and attached to page 9c of said Answer, were submitted to each member of the General Assembly of Illinois, or as to many of the alleged facts set forth in said two statements and insofar as material, demand strict proof. Plaintiffs deny the total payment to all retired teachers of $2500, $1000 from Pension Fund and $1500 from Educational Fund, as therein set forth, but allege on information and belief that more than half of retired teachers receive substantially less than maximum amount of $2500, and deny that law in effect at the time of said alleged submission of such statements to members of the Legislature provided "for the payment of $1500 per year as a so-called annuity to all retired teachers over and above their regular pension of $1000 per year received by them on retirement from the Pension Fund." Deny that all retired teachers receive $1500 as retirement annuities; deny that all retired teachers receive $1000 from Pension Fund; allege that less than half of retired teachers receive such maximum annuity and that a number much less than the whole receive such maximum amount from the pension fund; deny that all retired teachers receive annuities or pensions from both funds; allege that many receive no allowance whatever from pension
234 fund; deny that all retired teachers receive such

maximum amounts as retirement annuities and from pension fund; deny that the retirement annuity provided for under said amendments constitutes "an additional $500.00 per year as a gift from the Educational Fund."

4. As to allegations in Paragraph 18 of Answer as to period of payments of retirement annuities to Plaintiff Dodge and to other plaintiffs in Paragraphs 19, 20 and 21 of said Answer, admit that no installments of the retirement annuity were paid plaintiffs during July and August, 1935, nor after June, 1935, until September 20, 1935.

5. Deny allegation in Paragraph 20 that many of plaintiffs left the State of Illinois, allege they are all residents of said State; allege they have always been ready and willing since respective retirements, to give consultation and advice upon call of Superintendent of Schools, and have always kept themselves subject to such call; deny that they or any of them have ever been called upon for consultation and advice and have failed or refused to give same.

6. Admit that Plaintiff Tierney was retired August 9, 1933; Plaintiff Corbett was retired December 26, 1934; Plaintiff Dougherty was retired August 9, 1933, as in Paragraph 23 of Answer alleged.

7. As to allegations in Paragraph 24 of Answer, deny that on numerous occasions recommendations of Superintendent of Schools for retirement under Section 3 of Miller Law have been referred to Committees of the Board, temporarily deferred, referred
235 to standing committees of the Board and referred to the Attorney for his opinion; allege that such occa-

sions, if any, were very few over period of years from July 1, 1927, effective date of Section 3 of Miller Law providing for voluntary retirement, until June 26, 1935; allege that in each instance during said period where action deferred or reference made, same was so deferred on some question as to qualifications of one or more teachers, for retirement, who were recommended by Superintendent of Schools for voluntary retirement.

8. As to allegations in Paragraph 24½ of Answer as to introduction and passage of 1935 amendments to Miller Law and of amendment to Section 138 of Otis Law at regular session of 59th General Assembly, plaintiffs have no information and not sufficient knowledge or information upon which to found a belief and insofar as material, demand strict proof; admit that such amendments were filed in office of Secretary of State on July 12, 1935.

9. As to further allegations in Paragraphs 24½ and 24¾ that defendant members of Board were advised that "dual pension system" was "fundamentally unsound", or had been defined as nothing more than a "chaotic arrangement", or been "severely criticized by the Education Committee of the Illinois Senate", plaintiffs have no information or knowledge upon which to found a belief, and require, insofar as material, strict proof.

236 10. As to allegation in Paragraph 27 of Answer that Board after July 12, 1935, complied with provisions of statute of Illinois enacted by passage by General Assembly of Senate Bills Nos. 528 and 529, allege that reduction of amounts paid to plaintiffs as annuities from amounts they were entitled to

under law in force at the time of their retirements and at the time of written requests made for retirement as to Plaintiffs Burns, Reynolds and Paterson were not in compliance with provisions of statutes of State of Illinois.

11. Plaintiffs not informed and have no knowledge sufficient to found a belief as to allegations in Paragraph 27½ of Answer that due to lack of funds to maintain schools and pay teachers, defendant Board on May 27, 1933, reduced school year to nine months, and demand strict proof insofar as material.

12. Deny allegation in Paragraph 31 of Answer that amounts which were paid and tendered to plaintiffs and other teachers similarly situated were paid in full of all pensions or annuities required to be paid under Miller Law.

13. As to allegations in Paragraph 33 of Answer purporting to deny that plaintiffs offered or tendered their services in any manner since their several retirements, allege that each of them have at all times since their several retirements been ready and willing and held themselves subject to call of
237 Superintendent of Schools of Chicago for advisory service and consultation and have not nor has any one of them ever failed or refused to give such advisory service or consultation when called upon for same by said Superintendent.

14. Deny allegations in Paragraph 34 that amounts to be paid and that were paid to plaintiffs pursuant to Miller Law "are pensions, mere gratuities springing from the graciousness and appreciation of the sovereign power that may be given or withheld at the pleasure of such power."

15. Admit, as alleged in Paragraph 35½ of Answer that John E. Groves and Mary E. Stanton before commencement of this suit filed complaint in chancery in the Circuit Court of Cook County, No. 35-C-12886, against defendant Board and others.

15a. Deny that complaint in Groves case was filed on behalf of persons as stated in Paragraph 35½ of Answer; allege that as appears from complaint filed in said cause of Groves *et al.*, complainants therein brought said suit "in their own behalf, in behalf of such other taxpayers of said City of Chicago who may wish to join as additional Complainants, and in behalf of all other public school teachers and principals recently and forcibly retired from service as hereinafter described and who wish to join also as Complainants, but for none others, this Bill of Complaint is not intended as a class suit and binding upon any one not made an actual party hereto and by name also."

16. As to allegations in Paragraph 36 of Answer that in Complaint in Groves suit it is alleged
238 that complainants therein have vested rights under the statute and that those rights have become vested property rights by operation of the statute, and that the repeal or modification of the statute cannot legally divest complainants of such vested property rights so acquired under the statute, plaintiffs herein allege that such rights so referred to in suit of *Groves, et al.* v. *Board of Education,* as appears from the complaint in that suit, are the rights therein claimed to "permanency of tenure" and of complainants in that suit to remain in active teaching service of defendant Board, regardless of having

attained age 65 which more fully appears from the original complaint in the Groves suit as follows:

> "That three years thereafter," (referring to a three year period after the effective date of the said Otis Law which went into effect on April 20, 1917) "towit: on April 20, 1920, the contracts of these complainants with said Board of Education became PERMANENT and indefinite as to length of time said contracts would run or continue; * * * that under the aforesaid Statutes" (referring to said Otis Amendments) "the status and employment of your Complainants were determined by merit only and their appointments have become PERMANENT and subject ONLY to the rules of the Board of Education concerning conduct and efficiency, and subject to removal, dismissal, discharge or retirement for CAUSE only in the manner therein provided in said tenure laws"; (referring again to said Otis Amendment) "and that their respective rights"
>
> (That such rights are the claimed rights of complainants in that case to continue in active teaching service of defendant Board and to "permanency of tenure," under Otis Law, is shown by language in said complaint as follows:)
>
> "(and all other teachers with the same tenure rights) became VESTED PROPERTY RIGHTS UNDER SAID STATUTES SET FORTH in Paragraph five (5) *supra;* that their respective rights have become VESTED PROPERTY RIGHTS by operation of said statute, these Complainants state the fact to be that
> .239 not even a repeal or modification of said statute can legally divest these complainants of their vested property rights so acquired as aforesaid."

The foregoing extracts in quotations are verbatim from Paragraph 9 of original bill of complaint in

Groves case and as appears from context, the "statute" or "statutes" therein referred to are statutes which were in Paragraph 6 designated as "Teachers' Tenure Laws, *supra*, commonly known as the 'Otis Laws'," extracts from which as to permanency of employment of teachers after probationary period are quoted in Paragraph 5 of complaint in Groves suit in Circuit Court of Cook County.

16a. Allege that Groves suit is not under the Miller Law, as is present suit, but is under Otis Amendments, particularly Otis Amendment as to permanency of teachers in their positions as active teachers in the Chicago Public schools after three year probationary period.

17. In reply to allegations in Paragraph 38 and other paragraphs of Answer purporting to set forth allegations in complaint in the Groves suit pending in the Circuit Court, plaintiffs allege that that suit is brought under Otis Amendments; and that it is therein claimed that the attempt of defendant Board to compulsorily retire complainants therein was in violation of Otis Amendments; and that the rights and claims of complainants therein were under Otis Amendments and the alleged provisions thereof for "permanency of tenure", and not under "Miller
240 Act", is further shown by allegation in original complaint in Groves suit, Paragraph 15, as follows:

"(15) These Complainants further show unto your Honors that as to all teachers and principals in the Chicago public schools whose tenure had become fixed after three years of continuous service prior to July 11, 1935, said compulsory retirement laws above set forth have no legal effect,

are inoperative and void as to them as will more fully appear hereafter; that at most said compulsory laws can only apply to those teachers already in the service whose probationary period of three years has not elapsed and to those teachers who enter the service now for the first time."

18. Replying to allegations in Paragraph 35½ to and including 48 of Answer, allege that suit brought by Groves against Defendant Board and others in the Circuit Court is not based on same rights as are involved in suit at bar is apparent from allegations in original complaint in Groves suit, paragraphs 26 and 27, which are not set up or referred to in said paragraphs in said Answer in this suit, which allegations are as follows:

"(26) These Complainants further show unto your Honors that if they are not restored to their former positions and are compelled to bring numerous suits at law to collect their monthly installments of salaries as they become due and payable under the Statute of Illinois, the bringing of so many suits at law, and the expense, delays and harrassment which would be incident thereto, from the very nature thereof renders these two Complainants' legal remedies incomplete and inadequate, besides such legal remedies would not protect Complainants' permanent tenure rights or pension rights, wherefore Complainants are without an adequate remedy at law, in that there is no remedy at law as complete, practicable, and efficient to the end of and for the prompt administration of justice as the remedy in equity, and the intervention of a court of equity will prevent a needless multiplicity of suits, which, these Complainants are informed, is one of the favorite grounds for the equity jurisdiction in both State and Federal Courts."

"(27) These Complainants further state that at their present ages, their normal expectancies of life as shown by annuity or life tables is more than ten years; that if not restored to their former positions or positions of equal rank as regards
241 their respective salaries, the loss to each of these Complainants in salary alone will exceed the cash sum of three thousand dollars exclusive of interest and costs within the next two years, an amount sufficient to give the Federal Courts jurisdiction along with the other Federal questions involved as shown elsewhere in this Bill of Complaint."

18a. Replying to Paragraphs 35½ to 48 inclusive of Answer, allege that Groves suit does not set forth same rights and not based on same claims as suit in this case; allege this is apparent from language in original complaint in Groves case, Paragraph 29, as follows:

"These Complainants further state they are able, competent, and just as efficient as they were at the close of school in June, 1935, and are willing and wish to resume their former positions upon the opening of school in September, 1935; * * * that one stroke of your Honors injunctional pen will put a stop to the aforesaid wholesale ousting of some of Chicago's most efficient and capable servants—the illegal retirement of 242 teachers and principals as aforesaid." (The underscoring is ours.)

18b. Replying to Paragraphs 35½ to 48 inclusive of Answer in regard to suit brought by *Groves, et. al.* v. *Defendant Board* in the Circuit Court, plaintiffs allege that the following matters are contained in the prayer in the original Bill of Complaint in the Groves suit and also in the amended Bill of Com-

plaint therein, some of which are referred to or partially set up in substance in the Answer herein, but quotations from which show more clearly than appears from the Answer that said suit is an entirely different suit to obtain entirely different and other relief and based upon entirely different claims and rights from claims and rights upon which suit at bar is based. Such quotations from prayer in said Complaint in the Groves suit, which are the same in the Amended Complaint, are as follows:

242 "that the Court issue an injunction order directing said Board of Education and the Superintendent of Schools to restore these Complainants to their former status, positions and conditions;"

"that a like order issue restoring as many more of the 240 teachers and principals retired July 24, 1935 as who may wish to remain as teachers and principals and who do not voluntarily retire of their own free will;"

"that said Board of Education and Superintendent be enjoined from thereafter dismissing, removing or retiring the Complainants, or any of them, from their respective status, positions and conditions;"

"that said Board of Education and the Superintendent of Schools be commanded to order and cause the several persons, purported to be assigned to take the respective positions of these Complainants and all others forcibly retired on July 24, 1935, to desist and refrain from interfering, or attempting to interfere with Complainants and others respectively in their positions and the performance of their respective classroom duties, as held by them prior to July 24, 1935;"

18c. Allege that the prayer in the Groves suit is on behalf of Complainants therein and of any others

who wish to join in claiming they should not be removed from actice service as teachers and should continue to receive salaries as active teachers in the public schools of Chicago regardless of having attained age 65 or over, is apparent from next clause of prayer in original Bill of Complaint and amended Complaint in Groves suit, which as there appears is intended to be general and to apply to all prayers and parts thereof theretofore set forth, and is as follows:

> "That all of said orders include as many of the 240 other teachers and principals as wish to be retained in Chicago's public school system;"

18d. Allege that the remaining portions of said prayer following said last quotation consist only of prayer that on final hearing temporary injunction prayed for be made final; prayer for general relief; prayer for summons and answer; general prayer
243 for injunction "in the manner and form as said injunction is prayed for and set forth in the prayer for relief, being Paragraph No. 30 of this Bill of Complaint."

18e. In further reply to Paragraphs 35½ to 48, both inclusive, of the Answer regarding the Groves case in the Circuit Court of Cook County, plaintiffs allege that all quotations above set forth in this Reply are contained in same language in original Bill of Complaint in the Groves case and also in Amended Complaint in that case, including quotations above from prayer; allege that it is plain therefrom that the issues involved in the case at bar, interests of plaintiffs herein, the claims and rights of plaintiffs herein, and the grounds upon

which such claims and rights are based, are different and wholly dissimilar from the issues in the Groves suit, the interests of complainants in that suit, the claims and rights asserted by them, and the grounds upon which such claims and rights are based in that suit.

19. Allege that it appears from Groves case and Complaint and Amended Complaint therein and from above quotations from said Complaint, that the remedy and relief sought in that case are entirely different and of an entirely different nature from the remedy and relief sought by plaintiffs in case at bar.

Followed by the signatures of the 20 original plaintiffs by Allan J. Carter, attorney and agent in that behalf.

244 Affidavit of Allan J. Carter that he is attorney and agent in this behalf of plaintiffs; has read foregoing Reply, is familiar with contents and matters and things therein set forth, except matters therein stated to be on information, and that all matters and things in said Reply except matters therein stated to be on information, are true. That as to matters stated to be on information, affiant has no knowledge thereof sufficient to found a belief. Sworn to December 18, 1935.

246 Order entered December 19, 1935, granting leave to Rose Conley and others to intervene in said cause and to file Intervening Petition and Complaint within 10 days from December 18, 1935.

248 Intervening Petition and Complaint of Rose Conley and 67 other teachers, principals and other edu-

cational employees hereinafter named to join in the Complaint filed herein as Intervening Plaintiffs, filed December 28, 1935, alleges

Paragraph 1—That pursuant to leave granted by order of Court given, Rose Conley and 67 others hereinafter named, by Allan J. Carter, their attorney, enter the appearance of each as Intervening Plaintiffs. Names of said Intervening Plaintiffs are set forth in Paragraphs 2 to 7 hereof, that is to say:

249 Paragraph 2—The following Intervening Plaintiffs have been compulsorily retired under said Miller Act at an annuity as therein provided for to each of $1500 a year for life: Rose Conley, Lydia C. Compton, Virginia Morrison, Mary A. Noonan, Mary A. Woods, Laura B. Ayers, Eleanor Slattery.

Paragraph 3—That the following voluntarily retired at ages 70 or over at an annuity as provided for in said Act to each of $1500 a year for life: Cecelia Johnson, Luella Heinroth.

Paragraph 4—The following voluntarily retired after July 1, 1927 and before July 1, 1929:

(A) Of whom the following so retired at age 65 at an annuity to each of $1000 a year for life: Helen E. Ferguson, Caroline M. Searles.

(B) That the following retired at age 66 at an annuity of $1100 a year for life: Clara E. Nelson.

Paragraph 5—That the following voluntarily retired under said Miller Act after July 1, 1929, and before June 12, 1935:

(A) Of these, the following so retired at age 65 at an annuity as provided in said Miller Act to each

of $1000 a year for life: Sara F. Clinton, Cecelia M. Gavin, Hilda C. Johnson, Esther M. Meyer, Jane L. McBride, Sarah C. McGill, Mary A. McKeown, Inez M. Oldham, Florence C. Peacock, Elizabeth R. Rawson, Margaret E. Reed, Marcella Riley, Harriet B. Rogers, Helen F. Sheehy, Jennie E. Slack, Adelaide M. Thomason, Annie M. Stoeckel.

(B) That each of the following retired at age 66 at an annuity as provided in said Miller Act, to each, of $1100 a year for life: Mabel Corey, Lyman B. Mansell, Florence A. McCarthy, Effie C. Tinen.

(C) That each of the following retired at age 67 at an annuity as provided in said Miller Act, to each, of $1200 a year for life: Elizabeth M. Connolly, Catherine G. Ford, Abigail Hanrahan, Edith S. Hooper, Jane A. Moloney, Sarah Street, Helen E. Thiel.

(D) That each of the following retired at age 68 at an annuity as provided in said Miller Act, to each, of $1300 a year for life: Katherine Flaherty, Marie K. Snyder, Mary E. Weldon, Mary McCulloch.

(E) That each of the following retired at age 69 at an annuity as provided in said Miller Act, to each, of $1400 a year for life: Jennie M. Dignum, Walter E. Johnson, Minnie E. O'Donoghue (whose name shows on the School Board record as to her retirement as Minnie E. Donoghue) Mary E. Twohig, Emily Wincher.

Paragraph 6—The following Intervening Plaintiffs made written requests to the Board of Education during the months of May and June, 1935, for

voluntary retirement under the Miller Act. Superintendent of Schools of the City of Chicago recommended that they should be retired from active service in accordance with said written requests. Said recommendations as more fully set out in the Com-
251 plaint, were not acted upon by said Board except to defer action at a meeting held June 26, 1935, and at a meeting on July 24, 1935, Defendant Board adopted a report of the Superintendent of Schools purporting and attempting to compulsorily retire as of age 65 or over all of such Intervening Plaintiffs under the Miller Act as amended in 1935 at an annual annuity of $500 each.

(A) Of these, each of the following had in June, 1935, attained age 65 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1000 a year for life:

Recommended by Superintendent for retirement, as appears from printed proceedings of Board of June 26, 1935, No. A-35263 (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Leah D. MacLachlan.

Recommended by Superintendent for retirement, as appears from printed proceedings of Board of June 26, 1935, No. N-35263 (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mattie De Crouch, Katherine G. Walsh.

Recommended for retirement by Superintendent, as appears from printed proceedings of Board of June 26, 1935, No. D-35242, pages 1402 and 1403; Katherine Sheahan.

(B) Of these, each of the following had in June, 1935, attained age 66 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1100 a
252 year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Agnes A. Hawkshaw.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Mary H. Cullen, Clarence E. Johnson, Jessie M. Livermore.

(C) Of these, each of the following had in June, 1935, attained age 67 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1200 a year for life:

Recommended for retirement, as appears from printed proceedings of Board of June 26, 1935, No. A-35263 (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Annie J. Beattie, Julia Carver, Anna F. Mullay, and as appears from printed proceedings of Board of June 26, 1935, No. N-35263 (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Jessie L. Hobson.

(D) Of these, the following had in June, 1935, attained age 68 and was entitled on said written request to be retired under the Miller Act as effective in June, 1935, at an annuity of $1300 a year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263; (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Julia A. Sullivan.

(E) Of these, the following had in June, 1935, attained age 69 and was entitled on said written request to be retired under the Miller Act as effec-
253 tive in June, 1935, at an annuity of $1400 a year for life:

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. A-35263: (Exhibit "N" attached to Complaint) (Rec. 105-106; Abst. 76) Gertrude F. Corrigan.

Recommended for retirement, as appears from printed proceedings of said Board of June 26, 1935, No. N-35263: (Exhibit "O-2" attached to Complaint) (Rec. 111-112; Abst. 78) Clara L. Bauer, Lucy Laing, Sarah Jessie Root.

Paragraph 7. Intervening Plaintiff John W. Shepherd had in June 1935 attained age 67 and was until June 28, 1935, in the service of defendant Board as teacher in the public schools of Chicago and had been for more than 22 years, and, during last 20 years, more than 16 years. Said John W. Shepherd made written request for voluntary retirement in June, 1935, which request was received by Superintendent of Schools before the end of June, 1935. He was not included in any recommendation of said Superintendent for voluntary retirement, but, as appears from original complaint, by action of defendant Board on July 24, 1935, said Board adopted a report attempting to compulsorily retire said

Shepherd under the Miller Act as amended in 1935 at an annuity of $500. Said John W. Shepherd was entitled to voluntary retirement on his written request at an annuity of $1200 a year for life.

254 Paragraph 8. Each of the Intervening Plaintiffs named in Paragraph 2 is one of the persons referred to in original Complaint as one of the retired teachers, principals, etc., compulsorily retired from active teaching in the public schools of Chiago prior to July 11, 1935, by defendant Board and is similarly situated to original plaintiffs Dodge, Cook, Loomis, Whigam, Armstrong, Morse, Keen, Coddington and Toole, and each such Intervening Plaintiff was compulsorily retired under the Miller Act from active teaching in the public schools of said City of Chicago and from active service in such employment of defendant Board by appropriate proceedings of said Board, and at the time of his retirement had attained age 70 or more and had served in the public schools of said city for 20 or more years, and that defendant Board in so compulsorily retiring each of said Intervening Plaintiffs specifically provided that each was retired under said Miller Act upon an annuity of $1500 a year thereafter for life, as in said Miller Act provided.

Paragraph 9. Each of Intervening Plaintiffs named in Paragraphs 3 and 4 is one of the retired teachers, principals, etc., who voluntarily retired under the Miller Act as amended in 1927, and prior to its amendment in 1929, from active teaching in public schools of Chicago and is similarly situated to original Plaintiff McClelland, and each made writ-
255 ten request for retirement, was retired from active teaching, and at the time of such respective retire-

ment had attained the age as shown as to each in Paragraphs 3 and 4, and each had served in the public schools of Chicago for 15 years or more immediately prior to retirement, and upon retirement each was entitled to an annuity for life of the amount each year as shown as to each in Paragraphs 3 and 4.

Paragraph 10. That each of plaintiffs named in paragraph 5 is a retired teacher, principal, or educational employee, voluntarily retired under the Miller Act as amended in 1929 after July 1, 1929 and before July 11, 1935, is similarly situated to original plaintiffs Baird, Corbett, Callahan, Dean, Dougherty, Tierney and Woulfe; each made written request for retirement and was thereupon so retired from active teaching, and that at the time of such retirement each had attained age as to each shown in
256 Paragraph 5 and had within the last 20 years prior thereto served in the public schools of Chicago for an aggregate of 15 or more years and had served in the public schools of the United States for 25 or more years.

Paragraph 11. That each of Intervening Plaintiffs named in Paragraphs 6 and 7 is one of the teachers, principals, or other educational employees, who during May and June, 1935, made written request for voluntary retirement under the Miller Act as same was then in force and before the amendment of 1935 became effective, had each then attained age shown as to each in said paragraph 6, and that the service of each during the 20 years prior to June, 1935, aggregated 15 years or more in the Chicago public schools and 25 years or more in the public schools of the United States, and that each at the time of such application was entitled under

the law to voluntary retirement and to receive thereafter for life an annuity in the amount as shown as to each in Paragraphs 6 and 7.

Paragraph 12. Intervening Plaintiffs adopt the allegations in said Complaint with same effect as if herein again inserted and repeated at length and
257 applied to them, and each joins in the prayer of original Complaint and every paragraph thereof as fully as if each had been specifically and originally named as plaintiff in the original Complaint.

Paragraph 13. Intervening Plaintiffs pray that the pleadings heretofore or hereafter filed for original plaintiffs stand as like pleadings for Intervening Plaintiffs, as if each Intervening Plaintiff was named as co-plaintiff with original plaintiffs and that any pleadings which have been or may hereafter be filed on behalf of defendants to pleadings of original plaintiffs also stand as to Intervening Plaintiffs.

Paragraph 14. Intervening Plaintiffs pray that in the orders already entered and proceedings had herein and in any further proceedings, orders and decrees said Intervening Plaintiffs be severally considered and their rights be adjudicated as fully as if they had been made co-plaintiffs with original plaintiffs.

Paragraph 15. Intervening Plaintiffs pray that each be granted full relief under the prayer and each paragraph, of original complaint and that they be given benefit of all allegations in the original complaint and be granted all the relief prayed for therein as if such allegations and prayer for relief were herein set forth in full and as if they had

258 originally joined as co-plaintiffs in said original complaint, and also pray for other, further and different relief as equity may require, etc.

Signed on behalf of all Intervening Plaintiffs by Allan J. Carter and Alfred R. Bates, as attorneys and agents.

Sworn to December 28, 1935, by Alfred R. Bates, an associate of said Allan J. Carter, as one of the attorneys, as agent and on behalf of Intervening Plaintiffs named in Petition and Intervening Complaint.

260 Order, entered March 3, 1936, on motion of Richard S. Folsom, Attorney for defendants, that answer of defendants to original complaint stand as answer to intervening complaint of Grace L. Ackley and 861 other intervening plaintiffs filed November 12, 1935 and intervening complaint of Rose Conley and 67 other intervening plaintiffs filed December 28, 1935.

262 DECREE (final).

Order, entered March 3, 1936, on motion of plaintiffs for injunction in accordance with prayer of bill of complaint filed herein, intervening complaint of Grace L. Ackley and 861 other intervening plaintiffs filed November 12, 1935, and intervening complaint of Rose Conley and 67 other intervening plaintiffs filed December 28, 1935 adopting allegations and prayers of the original complaint, and on motion of City of Chicago, Edward J. Kelly, Mayor of said City, Gustave A. Brand, City Treasurer, Robert B. Upham, Comptroller of said City, that cause be dismissed, in which motion defendants,

Board of Education of the City of Chicago, James B. McCahey, President and member of said Board; Ernst Buehler, Vice-President and member of said
263 Board; and the other defendants who are members of said Board, and defendant, the Secretary, and defendant, the Auditor of said Board, join; and upon the sworn answer of the Board of Education of the City of Chicago and of the defendants, the President, Vice-President and members of said Board, and defendants, the Secretary and Auditor of said Board, which answer was by leave of Court allowed to stand as answer to the intervening complaints filed herein, denying that plaintiffs are entitled to any of the relief prayed, and praying that suit be dismissed for want of equity.

The Court having set said respective motions for hearing and having begun said hearing, and all parties being before the Court, said plaintiffs and defendants, by counsel, in open Court stipulated and agreed that cause proceed to final judgment, whereupon plaintiffs filed their replication, said replication to stand as replication of all intervening plaintiffs above referred to, and Court proceeded with trial of cause, and Court having considered pleadings and motions and evidence offered by parties, and oral and written arguments of counsel for respective parties, and being fully advised, finds that plaintiffs' complaint is insufficient in law or equity and that plaintiffs have not stated or made such
264 a case as entitles them or any of them to any relief from or against defendants, or any of them, touching matters contained in such complaint, or any such matters.

Therefore ordered, adjudged and decreed that plaintiffs' motion for injunction be and same is denied; that complaint be and same is dismissed for want of equity at plaintiffs' cost.

To entry of which order plaintiffs and intervening plaintiffs, by their attorney present in open Court, duly accept.

266 Order, entered March 3, 1936, granting leave to plaintiffs and intervening plaintiffs to present, settle and file report of the proceedings at the trial within sixty days from that date.

268 Notice of appeal filed March 6, 1936, directed to attorneys for all defendants.

268-276 Paragraph 1. Gives notice that the 945 persons therein named, being all of the original plaintiffs to the complaint (Rec. 3; Abst. 1) and all of the Intervening Plaintiffs named in said Intervening Petition of Grace L. Ackley and more than 800 others (Rec. 144; Abst. 91) and in said Intervening Petition of Rose Conley and 67 others (Rec. 248; Abst. 164) (except Intervening Plaintiffs Mary DeL. Bowen, Warren C. Hawthorne, Joseph H. Sheffield and Jessie M. Livermore, who do not join in the
276 appeal as Plaintiffs-Appellants hereby appeal to Supreme Court of Illinois from final judgment, order and decree entered herein in Superior Court of Cook County, Illinois, March 3, 1936, wherein and whereby Trial Court found, decided, ordered and decreed that plaintiffs' motion for injunction be and same was denied, and that complaint be and same was dismissed for want of equity, and that plaintiffs take nothing by their suit and that defendants go hence without day.

Paragraph 2. Plaintiffs-Appellants jointly and severally pray that final judgment, order and decree entered March 3, 1936 be reversed and cause remanded to Superior Court, with directions to enter decree directing issuance of injunction and other orders prayed in complaint, and directing the granting of other or different relief to which
277 plaintiffs may or shall be entitled. Signed on behalf of Chester C. Dodge and all of the 944 other Plaintiffs-Appellants thereinabove named, by Allan J. Carter, their Attorney of record.

Receipt of foregoing notice acknowledged on March 6, 1936, by defendant, Board of Education and defendants who are the members and officers thereof, by Richard S. Folsom, their attorney, and by City of Chicago and by defendants who are the Mayor, City Treasurer and Comptroller thereof, by Barnet Hodes, their attorney.

279 Proof of service of notice of appeal addressed to Richard S. Folsom, Attorney for Board of Education, *et al.*, Defendants-Appellees, and Barnet Hodes, Attorney for City of Chicago, *et al.*, Defendants-Appellees, notifying them that Chester C. Dodge and the 944 other Plaintiffs-Appellants did, on the 6th day of March, 1936, file with Clerk of Superior Court written notice of appeal to Supreme Court of Illinois, copies of which are herewith served upon them, dated March 6, 1936, followed by acknowledgment by Richard S. Folsom and Barnet Hodes, Corporation Counsel, Attorneys for defendants, of receipt, March 6, 1936, of a copy of said notice and a copy of said notice of appeal filed with Clerk of Superior Court therein mentioned.

281 Appeal bond $250.00, approved and filed March 6, 1936, with Chester C. Dodge, *et al.* (naming all of the 945 original Plaintiffs and Intervening Plaintiffs who are named in said notice of appeal) (Rec. 268-276; Abst. 175) as principals, and Glens Falls Indemnity Company, a corporation, as surety unto Board of Education of the City of Chicago, *et al.* (naming all of the other defendants) to secure costs,
289 interest and damages rendered and to be rendered in case said judgment of March 3, 1936, is affirmed by the Supreme Court.

298 Order, entered March 6, 1936, approving appeal bond of Chester C. Dodge and 944 other plaintiffs in the penal sum of $250.00, with Glens Falls Indemnity Company, a corporation, as surety, and ordering the same filed.

300 Praecipe for record filed March 9, 1936, directing the Clerk of the Superior Court of Cook County to make up complete authenticated transcript of record, listing twenty-nine different items to be included as they appear in said record and are abstracted herein. Dated Chicago, March 9, 1936.
302 Signed by Allan J. Carter, Attorney for Plaintiffs-Appellants. Receipt acknowledged on March 9, 1936 of a copy of the foregoing praecipe for transcript, by Richard S. Folsom, Attorney for Board of Education of the City of Chicago and individual Defendants-Appellees who are members and officers of said Board, and by Barnet Hodes, Attorney for said City of Chicago and individual Defendants-Appellees who are, respectively, Mayor, City Treasurer and ex-officio School Treasurer and Comptroller of said City.

304 Notice of Appearance, filed March 13, 1936, addressed to Allan J. Carter, signed by Richard S. Folsom, entering appearance in this Appeal of Board of Education of City of Chicago and the individual Defendants-Appellees, who are the President, the Vice-President, and members of said Board, the Secretary and the Auditor of said Board, and of said Richard S. Folsom as their Attorney, dated March 13, 1936, and receipt of copy thereof by Allan J. Carter as Attorney for Plaintiffs-Appellants.

306 Order, entered March 24, 1936, on motion of Attorney for Plaintiffs. Report of the Proceedings at the Trial of said cause, approved, signed, sealed and ordered filed.

308 March 24, 1936, Report of Proceedings at the Trial filed.

Certifies that on November 18, 1935 before Judge Harry B. Miller, Attorneys Allan J. Carter and Alfred R. Bates appeared on behalf of plaintiffs;

Frank S. Righeimer, Ralph Condee and Frank Schneberger appeared on behalf of Board of Education, defendant, and Joseph Grossman, Assistant Corporation Counsel, appeared on behalf of City of Chicago, defendant.

Mr. Carter: The Board in the ordinary manner in which they handle things are working right now on their budget for next year. In their budget for current year 1935, they included a million dollars to make these payments.

Mr. Righeimer: You say we appropriated it—you do not say we have the money—I don't think we have.

309 Mr. Carter: Under the appropriation, that money is earmarked for our people and we are entitled to it.

Unless the Court enjoins them from taking this out of the budget for next year, irreparable damage may be done to this group of people.

Mr. Righeimer: The budget law provides that failure to make an appropriation for a judgment would be no excuse to the Board for not paying the judgment. A judgment can be collected notwithstanding absence of appropriation. It so recites specifically in the School Law—no chance for any hurt.

Wednesday—November 20, 1935

Mr. Righeimer: I want to find out whether you contend this Miller Act is valid or invalid, as amended in 1935.

Mr. Carter: As applied to those who were in service at date of July 11, it is valid.

Mr. Righeimer: Invalid as to the others?

Mr. Carter: Invalid, if construed as applicable to those who had, as we claim, vested rights under facts set forth in our Bill. If they had no vested rights, then it can apply to them.

Mr. Carter: That money was budgeted for, appropriated, and is available.

Mr. Reigheimer: Where do you say it is avail-
310 able in your Bill? You know an appropriation is not money—it is simply a plan to spend when and if you have it.

Mr. Carter: We are entitled to that money during this calendar year.

My second point is that there is this section on statutes which says that wherever there are vested rights, they cannot be interfered with by an amendment.

Mr. Righeimer: We concede that is the law, where there is a vested right.

The Court: You will save time by not reading any law on that.

Mr. Grossman: I have a motion to dismiss the bill of complaint. I am not going to concern myself with the merits of the controversy between the Board of Education and the teachers.

Mr. Righeimer: If you will allow his motion, it will be determinative of the matter.

Mr. Carter: Of course I want to reply to what he has said.

The Court: Insofar as the City is concerned that might be so, I suppose.

Mr. Righeimer: That goes as far as the Board.

The Court: The Board has appeared and joined in the issues by filing an answer.

Mr. Righeimer: Yes, but we join in this motion.

The Court: Yes, I suppose you could. If the bill is not good as far as the City is concerned, it is not good as far as the Board is concerned.

311 Mr. Righeimer: The same argument is true in case of either.

The Court: They are seeking here that they be enjoined and restrained from reducing the amount.

Mr. Righeimer: They have already done it.

Mr. Carter: They are going to reduce it in the future every two weeks.

Mr. Righeimer: When Mr. Grossman points out that every prayer is a prayer for affirmative relief.

The Court: Except that last one which asked to restrain something from happening in the future.

Like all those mandatory cases that were cited in the Lyle case.

The paragraph L would come under those cases. There is exactly the parallel to them here, although the Board has taken out some money, you are asking by this mandatory injunction that they must not do it in the future.

I am inclined to think, gentlemen, that this bill is all right. I am inclined to think that Paragraph L gives the Court equitable jurisdiction. The Board is making this reduction on an act of the legislature.

312 Mr. Carter: A claimed interpretation.

The Court: They have something to base it on. You are asking a preliminary restraining order restraining them from doing what in their opinion the present law says they should do.

The Court should be very careful about issuing temporary injunctions. It should only be done where plaintiff may suffer irreparable damage, if not done, and to keep situation of plaintiff in *statu*

quo until finally decided on a full hearing of the merits on the entire bill what should be done.

Mr. Carter: Cannot we now agree that we will settle this matter of pleadings and your Honor will now give us the earliest date you can in the month of January for a week or three days in the week or something that is adequate to present the whole thing on the merits of the Bill and Answer?

The Court: Your legal points must be passed on here. Your point is that if this act of the Legislature includes the class of people you represent, then it is unconstitutional. If it does not include that class of people, then the Board is doing something they are not justified in doing.

Mr. Carter: That is it precisely.

The Court: If it is eventually decided on the proposition of law against you, it may not be necessary to take evidence. If it is held for you, it may be necessary to take evidence.

Mr. Carter: May I ask Judge Righeimer if they
313 would agree not to pass the new budget for the next year until after we have had our hearing?

Mr. Righeimer: We cannot do that. Anything which is done here in the way of a decree if a decree should be entered, would have to be taken care of without inclusion of the matter in the budget. We have a lot of tax objectors who are watching our budget; we have to budget our appropriations in accordance with the law as it stands. We are constantly harassed by innumerable objections. The law does say specifically that in the case of judgments a previous appropriation is not necessary, different from other appropriation statutes.

December 10, 1935.

Mr. Carter: This is a motion of the Plaintiffs for leave to file a motion to strike the Board's Answer and set it for next Monday afternoon. It is our idea that that will narrow the issues and probably avoid the necessity of putting in evidence.

Mr. Condee: In connection with that, we make a counter motion to strike the statement of claim, or ask that this motion carry back under the old practice.

314 The Court: Mr. Carter, you are going to be given leave to file your motion to strike now.

Monday, December 16, 1935.

(Appearances same as before, except that Mr. Fred V. Maguire, Assistant Corporation Counsel, appeared on behalf of City of Chicago instead of Mr. Grossman.)

Argument on Plaintiffs' motion to strike Answer of defendants Board of Education, *et al.*

Mr. Righeimer: None of the officers has a right to bind the Board and things handed to them do not mean anything until acted upon and approved by Board. That was the occasion for setting up in our Answer that there was no custom, but that we did act on these cases as presented. We did not always act the same day, but from time to time.

(Motion of plaintiffs to strike the Answer of defendants denied.)

Tuesday, December 17, 1935.

315 AZILE B. REYNOLDS, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Azile B. Reynolds; I live at 6330 Lakewood Ave., have lived there since prior to July of this year I dated my application for retirement under Miller Act the 10th of June, 1935, but did not hand it in until the 15th.

Q. What was your age at that time?

(Objection by defendant, overruled.)

Mr. Carter: It has to do with the amount of the
316 annuity. A. 67.

Q. What salary were you drawing and in what position at that time were you teaching?

(Objection by defendant as immaterial, overruled.)

The Witness: I was principal of an elementary school. My basic salary was $4800. My monthly checks were $399 for nine months. I had served thirty-seven and one-half years in the public schools.

HENRY FREMONT KEEN, a witness for plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Henry Fremont Keen; I live at 5619 Dorchester Ave., and lived there on or before July 1, 1935. I was retired from active service as a

teacher in Chicago, January 31, 1930. My age is now 77 years, 6 months. That was compulsory re-
317 tirement at age 72 under the Miller Law. I did not have any return from the pension fund as distinguished from the Miller Retirement Fund.

Mr. Righeimer: Wait a minute. Do I understand this evidence here is offered for the purpose of supplying proof that is not admitted in the Answer?

Mr. Carter: Yes. Allegations as to this man which were that this was his sole support, I think is denied. It was not admitted.

Mr. Righeimer: That is immaterial.

The Court: Sustained.

Mr. Carter: It is just as material as any of your things about the pension. The question was, whether he has any payments from so-called Pension Fund.

The Witness: Never have had since the inception of that very first. I do not get any payments from that. I contributed under the very first pension. In 1931, the year I was retired, I was receiving a salary of $400 a month or $4000 a year for ten months.

Q. Do you own the place where you live?

(Objection by defendant as immaterial, sustained; exception by plaintiffs.)

318 JAMES E. ARMSTRONG, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is James E. Armstrong; I was retired as a teacher or principal on February 1, 1929, by compulsory retirement. I was then principal of the Englewood High School and my salary was $6500 from Board of Education; prior to July 1, 1930, from the two funds I was receiving $2500. I was not a contributor to the Pension Fund until 1929, and was required at that time to pay into that fund a little less than $2600. I was 73 years old when I retired and had taught in Chicago for 44 years.

Cross Examination by Mr. Righeimer.

I have drawn from the Pension Fund since I
319 made this contribution $1000 a year for six years since 1929, and have been receiving the full $1500 from the Board up to July (1935) on the other retirement.

CHESTER C. DODGE, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Chester C. Dodge. I live at 125 N. Sacramento Ave., and have lived there continuously for the last few years. I was retired by Board of Education under Miller Act in 1927, I think.

Q. How old were you then?

Mr. Righeimer: Just a minute. I have been looking at the Answer and find that the Answer admits all of these people have been retired. I cannot fathom the purpose of this.

The Court: If the Answer admits that, what is the use of putting it in evidence?

Mr. Carter: There are other facts—maybe I am duplicating to some extent.

The Court: Get at the facts that the Answer does not admit.

Mr. Carter: There were some of those that were in this twilight zone that I spoke of. In view of the fact that our motion was overruled, I was not sure how far we would be expected to go.

Q. What was your position when you were retired?

(Objection by defendant, overruled.)

The Witness: Principal of different high schools and elementary schools.

Q. What was your salary when you were retired?

320 (Objection by defendant as immaterial, overruled.)

The Witness: $6300 a year.

Q. Did you have any conference in which any representative of the Board participated in the Fall of 1924, which preceded the presentation to the Legislature of the original Miller bill?

(Objection by defendant as immaterial, sustained.)

Mr. Carter: It has to do with some of the allegations. A thing they have denied as to the Board having drawn that bill and having remodeled it.

The Court: If it is denied in the Answer, go ahead. Objection overruled.

Mr. Carter: Was there such a conference?

The Witness: Well, I do not remember any where members of the Board of Education were present.

Q. Representatives of the Board?

(Objection by defendants sustained.)

The Witness: Mr. Condee was there present.

Mr. Carter: May that stand, your Honor?

The Court: Yes, but Mr. Condee,—I do not think anyone else can bind the Board but members of the Board. He said he was not present at any meeting at which any member of the Board was present.

Mr. Carter: Yes, that is right, but Mr. Condee was there.

Q. Do you know who prepared the Bill that was passed in the Legislature?

Mr. Righeimer: I object to that as immaterial.

The Court: Well, unless he was there and saw the party preparing it.

321 The Witness: Mr. Condee came into the meeting with a bill.

Mr. Righeimer: Wait a minute—I object.

The Witness (continuing): —prepared and said he was presenting it and represented the bill that the Board of Education was approving at that time.

Mr. Righeimer: I ask that that be stricken as self-serving.

The Court: No, I will let it stand.

Mr. Carter: I call Mr. Bates for pure computation from Board's records to show that this custom, your Honor, as to the last three Plaintiffs—that is all that this has reference to.

ALFRED R. BATES, a witness for Plaintiffs, sworn, testified:

Direct Examination by Mr. Carter.

My name is Alfred R. Bates; I am an attorney and partner of Mr. Carter and have been working on this case for several weeks and months. Have had occasion to go through printed proceedings of Board for last five years. I have made a search and examination of proceedings as to voluntary and compulsory retirements.

Q. Will you state to the Court what you find with reference to voluntary retirements, whether there are any exceptions as you found it in those five years, to the Board's passing on a recommendation from the Superintendent of Schools regarding voluntary retirements at the same meeting at which same were presented?

322 Mr. Righeimer: I object as not competent and not proper, the mere fact that he may have made an investigation.

The Court: The reports speak for themselves.

Mr. Carter: They are here.

Mr. Righeimer: And not the best evidence.

Mr. Carter: We could offer them. The only point is that after the three, Burns, Miss Reynolds, who has just been on the stand, and Paterson, as to those three who sought to be retired in June or prior to June, Burns on May 31.

Mr. Righeimer: Miss Reynolds said she did not make her application until after the schools were closed.

The Court: The point of the objection on that is this: He is testifying about what his opinion of what the minutes say—the minutes of the Board are the best evidence.

Mr. Carter: The only thing I am getting at is this—it is a short cut in view of our desire merely to show the custom.

The Court: The minutes will be the best evidence, and as long as there is an objection, the Court will have to sustain it.

Mr. Carter: I have here the pamphlet copies for the year 1934-1935.

Q. Mr. Bates, have you examined those and can you point to the numbers in those pamphlet copies that show any Board proceedings relating to voluntary retirements? A. I have and I can.

323 Q. Will you state the pages? May it be considered, that I am offering those pages in evidence and will substitute photostats?

The Court: Yes.

The Witness: Page 172.

Mr. Carter: Does that show voluntary retirement?

Mr. Righeimer: I object to that.

The Court: Yes, page 172 of what proceedings?

Mr. Righeimer: This report will speak for itself.

The Witness: Of September 4, 1934—proceedings of Board of Education from Official Report of the Proceedings, Printed.

Q. Will you give the date of the pages of the Report and the action by the Board on the Report? A. No. 34326, the one I have been speaking about, was headed "Voluntary Retirement of Teachers."

Mr. Righeimer: I object. All that was asked for was the pages where they appear in the Proceedings and the speeches ought to be cut out.

The Court: It speaks for itself. You may read that page in the record if you want.

324 Mr. Carter: I want to offer substitutes—photostats.

The Court: Yes.

The Witness: The action of the Board appears on page 173 of the Proceedings for the same meeting, adopting the Report.

Mr. Carter: All right. May I stipulate with counsel? Will it be necessary, as you are not questioning the form of the offer to photostat the first page of each of these meetings?

Mr. Righeimer: No.

Mr. Carter: But just the two pages.

Mr. Righeimer: You can introduce them. Under the statutes they are admissible in evidence.

Q. What is the next one? A. Page 236, meeting of September 26, 1934, Voluntary Retirement, Report No. 34343, passed as appears on page 241.

Page 277, meeting of October 10, 1934, No. 34396, Voluntary Retirement, passed page 280.

Page 305, No. B-34442, and on same page No. C-34442, as to Voluntary Retirements, November 1, 1934, passed at same meeting as appears on page 306.

Page 339, November 14, 1934, No. 34489, as to Voluntary Retirements, passed pages 340-341.

325 Page 368, No. 34531, Voluntary Retirements, meeting November 28, 1934, passed at that meeting, page 369.

Page 400, No. 34593, meeting December 12, 1934, passed as appears from minutes thereof on page 402.

Page 441, No. 34652, meeting of December 26, 1934, passed on page 444.

Page 962, No. 34773, meeting of January 23, 1935, as to Voluntary Retirements, passed as appears on page 964.

Page 983, meeting of January 30, 1935, passed as appears on page 984.

Page 1002, two recommendations, No. 34870 and No. 34871, meeting of February 13, 1935. Both passed as appears from minutes of that meeting on page 1008.

Page 1070, meeting of February 27, 1935, No. 34929, passed as appears on page 1074.

Page 1101, No. 34996, meeting of March 13, 1935, passed as appears on page 1104.

Page 1158, No. 35095, meeting of April 24, 1935. Same meeting, page 1163, No. J-35101. Both passed as appears on page 1168.

Page 1126, meeting of April 3, 1935, No. 35044, passed as appears on page 1128.

Page 1318, meeting of May 15, 1935, No. 35159, Voluntary Retirement, passed as appears on pages 1320 and 1321.

That is all I have been able to find in the school year 1934 to 1935. No indexes for that year.

Mr. Carter: I offer those several pages in evidence.

(Objection by defendants overruled.)

(The pages referred to by the witness were received in evidence and are as follows:)

326-366 Plaintiffs' Exh. 5 to and including Exh. 5-mm.

(Photostatic copies of pages of printed proceedings of Board of Education.)

326 Plaintiffs' Exh. 5 September 5, 1934 Page 172 (34236) Voluntary Retirement of Teachers.

Superintendent of Schools recommends that in accordance with their written requests, the following named members of the teaching force be retired from active service, pursuant to the provisions of the Teachers' Retirement Law, effective on the dates specified; There then follow the names of 28 persons, with information as to each showing whether teacher, principal or assistant principal, name of

school, effective date of retirement, date of birth, period of service in Chicago public schools, with month and year when such service commenced and terminated and number of years, and if not continuous, month and year when service re-commenced and again terminated and in each such case number of years of such service during last 20 years, and if Chicago service less than 25 years, period of service in public schools of United States outside of Chicago.

Said 28 so named include Intervening Plaintiffs to this cause Martha V. Bishop, age 65, Chicago service 45 years; Jessie M. Brown, age 65, service 40 years; Elizabeth Campbell, age 69, service 40 years; Kate McKinnie, age 65, Chicago service 20 years, outside service 10 years; Sophie Chenowith, age 68, Chicago service 48 years; Emma Isabel Crosby, age 65, service 40 years; John Michael Davies, age 69, service 35 years; Eula W. Deaton, age 65, service 25 years, 9 months; Huldah L. Fischer, age 67, service 47 years; Frances L. Hevle, age 65, service 46 years; Ida T. Hoffman, age 67, service 47 years; Edith S. Hooper, age 67, service 45 years; Charlotte J. Huscher, age 66, service 40 years; Matilda Krimmel, age 65, service 41 years, last 20 years 16 years; Josephine Krohn, age 67, service 39 years; Susan J. McDonnell, age 69, service 43 years; John B. Moulton, age 65, service 39 years; Amelia L. Petyan, age 65, service 40 years, last 20 years 19 years; Mary E. O'Neill, age 68, service 46 years; Anna G. Peat, age 65, service 45 years; Hans C. Peterson, age 65, service 30 years; Anna J. Powell, age 65, Chicago service 19 years 9 months, outside service 18 years; Amelia Schweitzer, age 65, Chi-

cago service 45 years; Fanny B. Wilson, age 69, service 40 years; Adrienne Yerbury, age 65, service 41 years; Mamie J. Buckley, age 65, service 41 years.

(Note: Except as otherwise stated, "service" in the abstract of this and of all the following exhibits refers to "Chicago Service.")

327 Exh. 5-a September 5, 1934 Page 173

The foregoing Report No. 34236 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

328 Exh. 5-b September 12, 1934 Page 186
(34278) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Emma E. Fuhrman, age 65, Chicago service 18 years, outside 12 years; Cora B. Mowbray, age 66, Chicago Service 46 years; May B. Wallace, age 66, service 44 years.

329 Exh. 5-c September 12, 1934 Page 191

The foregoing Report No. 34278 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

330 Exh. 5-d September 26, 1934 Page 236
(34342) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications for such retirement

and effective date as to Intervening Plaintiff Lyman B. Mansell, age 65, service 26 years.

(34343) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna M. Johnston, age 65, service 44 years; Margaret E. McLaughlin, age 69, service 50 years.

331 Exh. 5-e September 26, 1934 Page 241

The foregoing Reports Nos. 34342 and 34343 were on motion of Mr. Buehler approved and adopted by vote on roll call, six yeas, no nays.

332 Exh. 5-f October 10, 1934 Page 277

(34396) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Jennie L. Moore, age 66, service 43 years; Fannie Samuels, age 65, service 34 years.

333 Exh. 5-g October 10, 1934 Page 280

The foregoing Report No. 34396 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

334 Exh. 5-h November 1, 1934 Page 305

(B-34442) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of Intervening Plaintiff Abigail Hanrahan named for retirement and effective date, age 67, service 45 years.

(C-34442) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of Intervening Plaintiff Katherine E. Ashelby named for retirement and effective date, age 65 years, service 36 years.

335 Exh. 5-i November 1, 1934 Page 306

The foregoing Reports Nos. B-34442 and C-34442 were on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

336 Exh. 5-j November 14, 1934 Page 339

(34489) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of 5 persons named for such retirement and effective dates including Intervening Plaintiffs Nora P. Grogan, age 65, service 41 years; service for 20 year period immediately preceding, 17 years; Frank W. Rieder, age 70, service 45 years; Helen F. Sheehy, age 65, service 45 years; Jessie L. Stone, age 65, service 45 years; Belle Wilson, age 65, service 40 years.

337 Exh. 5-k and 5-l November 14, 1934 Pages 340-341

338 The foregoing Report No. 34489 was on motion of Mr. Fry approved and adopted by vote on roll call, eight yeas, no nays.

339 Exh. 5-m November 28, 1934 Page 368

(34531) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Flora V. Renaud, age 68, service 43 years; Mary E. Conners, age 65, service 46 years; Mary O'Brien, age 67, service 45 years; Rose A. Tooney, age 65, service 34 years; Belle Whyte, age 65, service 41 years; Sarah C. Thomas, age 65, service 37 years; during last 20 years, 18 years.

340 Exh. 5-n November 28, 1934 Page 369

The foregoing Report No. 34531 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

341 Exh. 5-o and 5-p December 12, 1934 Pages 400-401

(34593) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 12 persons named for such retirement and effective dates, including Intervening Plaintiffs Jennie Lintuman, age 66, service 48 years; Therese M. McDermott,

age 66, service 44 years; Mary I. Reeling, age 67,
342 service 46 years; Anna T. Robinson, age 69, service 40 years; Katherine Rogers, age 65, service 43 years; Carolyn I. Smith, age 66, service 33 years; Etta C. Deffler, age 65, Chicago service 18 years, outside 10 years; Mabel C. J. Sherwin, age 65, Chicago service 45 years; Annie C. Fraser, age 65, service 45 years; Julia E. Hilts, age 65, Chicago service 24 years, outside 10 years; Alice S. Wiltshire, age 65, Chicago service 41 years.

343 Exh. 5-q December 12, 1934 Page 402

The foregoing Report No. 34593 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

344 Exh. 5-r December 26, 1934 Page 441

(34652) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in substantially same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiff Allison W. Augur, age 69, service 32 years; Plaintiff Mary L. McClelland (made original Plaintiff to this suit under her present name of Mary L. M. Corbett) age 66, Chicago service 20 years, outside 23 years; Intervening Plaintiff Florence C. Peacock, age 65, Chicago service 45 years.

345 Exh. 5-s December 26, 1934 Page 444

The foregoing Report No. 34652 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

346 Exh. 5-t January 23, 1935 Page 962

(34773) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 13 persons named for such retirement and effective dates, including Intervening Plaintiffs Emma Badger, age 69, service 43 years; Mabel F. Doty, age 65, Chicago service 24 years, outside 11 years; Maud A. Drewett, age 65, Chicago service 43 years; Mary C. McMahon, age 66, service 44 years; Anne E. G. Morse, age 68, service 47 years; Anna J. O'Neill, age 65, service 44 years; Alice H. Quigley, age 67, service 34 years; Agnes Styles, age 65, service 42 years; Adelaide M. Thomason, age 65, service 43 years.

347 Exh. 5-u January 23, 1935 Page 964

The foregoing Report No. 34773 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

348 Exh. 5-v January 30, 1935 Page 983

(34825) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications for such retirement and effective date of Intervening Plaintiff Mary Ellen Yohn, age 67, service 29 years.

349 Exh. 5-w January 30, 1935 Page 984

The foregoing Report No. 34825 was on motion of Mr. Walker approved and adopted by vote on roll call, six yeas, no nays.

350 Exh. 5-x February 13, 1935 Page 1002

(34870) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of the person therein named for such retirement and effective date.

(34871) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth B. Britt, age 65, service 45 years;

351 (Exh. 5-y February 13, 1935 Page 1003)

Ida A. Hegner, age 65, service 41 years; Mary E. Hassett, age 65, service 46 years; Agnes T. Spellacy, age 65, service 44 years; Mary A. Fanning, age 66, service 42 years.

353 Exh. 5-z February 13, 1935 Page 1008

The foregoing Reports Nos. 34870 and 34871 were on motion of Mr. Buehler approved and adopted by vote on roll call, six yeas, no nays.

354 Exh. 5-aa February 27, 1935 Page 1070

(34929) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 8 persons named for such retirement and effective dates,

including Intervening Plaintiffs Alice L. Garthe, age 65, service 47 years; Ida K. Gimbel, age 65, service 36 years; Emily Magner, age 65, service 27 years; Myrtle E. Mattison, age 65, service 40 years; Ida Mighell, age 67, service 42 years.

355 (Exh. 5-bb February 27, 1935 Page 1071)

Mary J. Saunders, age 65, service 42 years during last 20 years, 19 years; Flora L. Dahlem, age 65, service 41 years.

Also shows correction in Board Report No. 34871 (Exh. 5-y) (Rec. 351; Abst. 201) of date of birth of Intervening Plaintiff Ida A. Hegner to read January 18, 1870 (age 65 at date of retirement).

356 Exh. 5-cc February 27, 1935 Page 1074

The foregoing Report No. 34929 was on motion of Mr. Buehler approved and adopted by vote on roll call, seven yeas, no nays.

357 Exh. 5-dd March 13, 1935 Page 1101

(34996) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 8 persons named for such retirement and effective dates, including Intervening Plaintiffs Julia Herrick, age 65, service 34 years; Margaret L. Lord, age 66, service 35 years; Mary McCracken, age 65, service 45 years; Agnes M. Smith, age 67, service 44 years; Sarah G. White, age 65, service 38 years.

358 Exh. 5-ee March 13, 1935 Page 1104

The foregoing Report No. 34996 was on motion of Mr. Buehler approved and adopted by vote on roll call, seven yeas, no nays.

359 Exh. 5-ff April 3, 1935 Page 1126

(35044) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Kate Quarton, age 66, service 40 years; Addie E. Roziene, age 65, service 25 years.

Also retirement of 3 persons named, including Intervening Plaintiffs Julia Herrick and Sarah G. White authorized March 13, 1935 (No. 34996 Exh. 5-dd) (Rec. 357; Abst. 202) be made effective as of April 1, 1935.

360 Exh. 5-gg April 3, 1935 Page 1128

The foregoing Report No. 35044 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

361 Exh. 5-hh April 24, 1935 Page 1158

(35095) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 4 persons named for such retirement and effective dates, including Plaintiff Catherine L. Baird, age 68, ser-

vice 35 years; Intervening Plaintiffs Anna S. Gaw, age 65, Chicago service 21 years, outside 19 years; W. W. Reed, age 68, Chicago service 25 years.

362 Exh. 5-ii April 24, 1935 Page 1163

(J-35101) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna Church, age 67, Chicago service 20 years, outside 15 years; Katherine M. Hall, age 67, Chicago service 38 years; Mary A. Rafferty, age 65, service 45 years; Mary Zimmerman, age 65, service 41 years.

363 Exh. 5-jj April 24, 1935 Page 1168

The foregoing Reports Nos. 35095 and J-35101 were on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

364 Exh. 5-kk May 15, 1935 Page 1318

(35159) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 5 (Rec. 326; Abst. 193) qualifications of each of the 2 persons named for such retirement and effective dates, including Plaintiff Caroline M. Dean, age 68, service 27 years; Intervening Plaintiff Effie Hoerner, age 65, service 45 years.

365 Exh. 5-ll May 15, 1935 Page 1320

The foregoing Report No. 35159 was on motion of Mr. Buehler approved and adopted by vote on

366 (Exh. 5-mm May 15, 1935 Page 1321)

roll call nine yeas, no nays.

368 Mr. Carter: Now I have here, a similar statement prepared by Mr. Bates for these four other years. I would like to make the same sort of an offer. The volumes are all here and it is a case of working back year by year as to each of these. It seems to me that counsel ought not to object.

Mr. Righeimer: I have no objections to his witness stating that he has made an examination and in that examination on certain pages of the proceedings, or certain dates, that there were certain actions taken in reference to it and that these things speak for themselves.

Mr. Carter: And that they may be offered in evidence?

Mr. Righeimer: And that they may be offered and received.

Mr. Carter: That photostats of them?

Mr. Righeimer: May be received in evidence, subject to my objection that it is immaterial.

The Court: That they are immaterial, yes.

Mr. Righeimer: And it is not proper for the purpose of establishing a custom.

The Court: Yes.

The Witness: I have checked over from 1930. The first volume is July, 1930.

The Court: Is it necessary, as there is no objection to it, to have him read all these things?

Mr. Carter: Not if it is understood that they admit it in evidence subject to their check. We will give them a list of them.

Mr. Righeimer: Subject to our objection.

The Court: Subject to their objection that they are immaterial. Not as to the form of the proof or the form of the offer—is that right?

369 Mr. Righeimer: That is true.

Mr. Carter: It is considered that they are in. We will ask to substitute photostats as to these others because they are bound volumes and we will have to return them. That will be understood.

Mr. Righeimer: Yes.

(The documents referred to were received in evidence and are as follows:)

370-409 Plaintiffs' Exh. 1 to and including Exh. 1-ll.

(Photostatic copies of pages of printed proceedings of Board of Education.)

370 Plaintiffs' Exh. 1 July 9, 1930 Page 8
(27217) Voluntary Retirement of Teachers.

The Superintendent of Schools recommends that in accordance with their written requests the following members of the teaching force be retired from active service, pursuant to the provisions of the Teachers' Retirement Law, effective on the dates

specified: There then follow the names of six persons with information as to each showing whether teacher, principal or assistant principal, name of school, effective date of retirement, date of birth, period of service in Chicago public schools, with month and year when such service commenced and terminated and number of years, and if not continuous, month and year when service recommenced and again terminated, and in such case, number of years of such service during last twenty years; and if Chicago service less than twenty-five years, period of service in public schools of the United States outside of Chicago. Said six so named include Intervening Plaintiffs Alma Beach, age 68, service Chicago 23 years, outside 15 years; May E. Curtiss, age 65, Chicago service 43 years; Luman Hewes, age 66, service 40 years; Nellie L. Linsley, age 65, service Chicago 17 years 1 month, outside 10 years 5 months, last twenty-year period 17 years 1 month Chicago service; Adeline S. A. Schaefer, age 65, Chicago service 45 years; Stella B. Vincent, age 68, service Chicago 15 years 9 months, outside 16 years;

371 Exh. 1-a July 9, 1930 page 20

The foregoing report No. 27217 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

372 Exh. 1-b July 23, 1930 page 79

(27338) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement

and effective date of six persons named, including Intervening Plaintiffs Katharine C. Baker, age 65, service 35 years; Jessie E. Blodgett, age 66, service 45 years;

373 (Exh. 1-c . July 23, 1930 page 80)

Barbara C. Leu, age 67, service 34 years; Julia T. Murphy, age 66, service 47 years; Mary E. Sullivan, age 65, service 43 years, for last twenty-year period 19 years 5 months.

374 Exh. 1-d July 23, 1930 page 86

The foregoing Report No. 27338 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

375 Exh. 1-e August 5, 1930 page 141

(27530) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exhibit 1 (Rec. 370; Abst. 206) qualifications of each of three persons named for such retirement and effective dates, including Intervening Plaintiffs Catherine G. Ford, age 67, service 44 years and during last twenty years, 19 years 9 months; Cecelia M. Gavin, age 65, service 47 years; Anna Taylor Northway, age 65, service 31 years.

376 Exh. 1-f August 5, 1930 page 142

The foregoing Report No. 27530 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

377 Exh. 1-g August 29, 1930 page 230

(M-27589) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of nine persons named for such retirement and effective dates, including Intervening Plaintiffs Louise Alvord, age 67, service 41 years; Josephine S. Hersperger, age 66, service 31 years; Alice L. Hogan, age 65, service 37 years; Fred G. Holmes, age 65, service 25 years, Nellie E. Larkin, age 65, service 44 years; Emma M. Letz, age 69, service 50 years; Gertrude D. Schilling, age 66, service 46 years.

The foregoing Report No. M-27589 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

378 Exh. 1-h September 10, 1930 page 292

(27741) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of two persons named for such retirement and effective dates, including Intervening Plaintiff Alice M. Dummer, age 65, Chicago service 39 years.

(27742) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of three persons named for such retirement and effective dates,

including Intervening Plaintiffs Elinor K. Boothroyd, age 66, Chicago service 39 years, for last twenty year period, 19 years 8 months;

379 (Exh. 1-i September 10, 1930 page 293)

Ida M. Peaslee, age 65, service 44 years; Elizabeth E. Walde, age 69, service 42 years.

380 Exh. 1-j September 10, 1930 page 300

The foregoing Reports Nos. 27741 and 27742 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

381 Exh. 1-k September 24, 1930 page 391

(27955) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of two persons named for such retirement and effective dates, including Intervening Plaintiffs Viola M. Shaw, age 65, service 25 years 9 months; Grace Townsend Smith, age 65, service 45 years.

(27956) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to Intervening Plaintiff Elizabeth W. Murphy, age 65, service 45 years.

382 Exh. 1-l September 24, 1930 page 401

The foregoing Reports Nos. 27955 and 27956 were on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

383 Exh. 1-m October 8, 1930 page 453

(28099) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of five persons named for such retirement and effective dates, including Intervening Plaintiffs Emma A. W. Allen, age 66, service Chicago 23 years, outside 16 years;

384 (Plaintiffs' Exh. 1-n October 8, 1930 page 454)

Elizabeth M. Connolly, age 67, Chicago service 35 years; Jennie E. Slack, age 65, service 45 years; Jennie L. Snyder (now married and an Intervening Plaintiff under the name of Jennie L. McBride), age 65, service 29 years.

(28100) Retirement of Teachers—Correction of Date.

Superintendent recommends that Report No. 24588 adopted July 10, 1929, be amended so that date of retirement of the five persons named in this report, including Intervening Plaintiffs Minnie T. Alexander, Mary A. Hotchkin and Mirabelle S. Stodder, shall become effective as of close of school year (June 28, 1929) instead of September 2, 1929.

Written applications for voluntary retirement under Teachers' Retirement Law were filed by them, date of application and date designated for retirement being as follows:

Name	Date of Application	Date Requested for Retirement
Minnie T. Alexander	June 28, 1929	June 28, 1929
Ada R. Farr	June 18, 1929	June 29, 1929
Anne Garden	June 28, 1929	June 30, 1929
Mary A. Hotchkin	June 1, 1929	June 30, 1929
Mirabelle S. Stodder	June 12, 1929	June 28, 1929

Following the usual custom, recommendation to Board provided for retirement as of date on which annuity would begin, September 2, 1929, first day of new school year. However, an amendment to the Retirement Law which went into force and effect on July 1, 1929 reduced the maximum annuity for voluntary retirement from $1500.00 to $1400.00 for all persons retiring after first day of July, 1929. This change in the law was not generally known and the Superintendent was not advised of it until about the first of October, 1929. He believes that inasmuch as the teachers above named actually filed their applications for retirement prior to, and asked to be retired at the close of the school year, their requests should be granted and that they should be retired under the provisions of the Law as it existed prior to July 1, 1929. The Attorney of the Board states that there is no legal reason why this correction may not be made.

385 Exh. 1-o October 8, 1930 page 459

The foregoing Reports Nos. 28099 and 28100 were on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

386, Exh. 1-p October 22, 1930 Page 520

(28244) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in the same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to the person therein named.

387 Exh. 1-q October 22, 1930 page 523

The foregoing Report No. 28244 was on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

388 Exh. 1-r November 12, 1930 page 558

(28380) Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the three perpersons named for voluntary retirement and effectives dates, including Intervening Plaintiffs Chattie E. Field, age 65, service 36 years; Mary L. Russell, age 69, service 30 years; Agnes G. Troschel, age 69, service 42 years.

390 Exh. 1-s November 12, 1930 page 574

The foregoing Report No. 28380 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

391 Exh. 1-t December 10, 1930 Page 711

(28697) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Jane B. Baldwin, age 65, Chicago service 19 years, outside 22 years; Rose A. Farley, age 65, Chicago service 43 years; Nellie E. Green (joined as Intervening Plaintiff herein under her present name of Nellie Green Long,) age 67, service 47 years.

392 Exh. 1-u December 10, 1930 Page 713

The foregoing Report No. 28697 was on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

393 Exh. 1-v December 26, 1930 Page 795

(28833) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Millicent B. Bingham, age 68, Chicago service 15 years 8½ months, outside 12 years; Mary A. Fox, age 65, Chicago service 42 years; Fanny A. Royall, age 66, service 46 years; Dixie Lee Bryant, age 69, Chicago service 22 years, outside 13 years.

394 Exh. 1-w December 26, 1930 Page 797

The foregoing Report No. 28833 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

395 Exh. 1-x January 14, 1931 Page 829

(28935) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same from as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to Intervening Plaintiff Sarah Eva Kendall, age 68, service 25 years.

(28936) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Henrietta A. Crowley, age 65, service 45 years; Ada Jewell, age 67, service 30 years.

396 Exh. 1-y January 14, 1931 Page 833

The foregoing Reports Nos. 28935 and 28936 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

397 Exh. 1-z January 28, 1931 Page 1313

(29019) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named

for such retirement and effective dates, including Intervening Plaintiff Kate Keith, age 66, service 44 years.

398 Exh. 1-aa January 28, 1931 Page 1315

The foregoing Report No. 29019 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, nine yeas, no nays.

399 Exh. 1-bb February 11, 1931 Page 1345

(29118) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective date, including Intervening Plaintiffs Mary E. Babcock, age 66, service 32 years; J. Katharine Cutler, age 67, service 46 years; Hilda C. Johnson, age 65, service 42 years; Minnie C. Olson, age 68, service 39 years, for last 20 years, 16 years; Anna V. Pettit, age 69, service 36 years; Catherine E. M. Virts, age 65, service 29 years, for last 20 years, 18 years, 1 month.

400 Exh. 1-cc February 11, 1931 Page 1347

The foregoing Report No. 29118 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

401 Exh. 1-dd March 11, 1931 Page 1438

(29312) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiff Lizzie V. Borthwick, age 65, service 43 years; Sarah M. Campbell, age 65, service 32 years;

402 (Exh. 1-ee March 11, 1931 Page 1439)

Harriet W. Winter, age 66, service 46 years.

403 Exh. 1-ff March 11, 1931 Page 1440

The foregoing Report No. 29312 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

404 Exh. 1-gg April 8, 1931 Page 1518

(29485) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) her qualifications for such retirement and effective date as to Intervening Plaintiff Nellie M. Cochran, age 66, service 37 years.

405 Exh. 1-hh April 8, 1931 Page 1529

The foregoing No. 29485 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

406 Exh. 1-ii April 22, 1931 Page 1568

(29603) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Edith B. Flagler, age 66, service 35 years, during last 20 years, 15 years 5 months; Helena D. Harper, age 65, service 32 years.

407 Exh. 1-jj April 22, 1931 Page 1570

The foregoing Report No. 29603 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

408 Exh. 1-kk May 13, 1931 Page 1720

(29714) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective date, including Intervening Plaintiff Mary T. Flynn, age 68, service 43 years.

409 Exh. 1-ll May 13, 1931 Page 1722

The foregoing Report No. 29714 was on motion of Mr. English approved and adopted by vote on roll call, ten yeas, no nays.

410-443 Plaintiffs' Exh. 2 to and including Exh. 2-gg.

(Photostatic copies of pages of printed proceedings of Board of Education.)

Plaintiffs' Exh. 2 July 8, 1931 Page 7

(30110) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exhibit 1 (Rec. 370; Abst. 206) qualifications of each of the 8 persons named for such retirement and effective dates, including Intervening Plaintiffs Minnie A. Dietz, age 67, service 44 years; Minnie E. Donoghue, age 69, service 53 years; Mary E. Gearen (made an Intervening Plaintiff under her present name of Mary E. Tosney), age 66, Chicago service 16 years 1 month, outside 22 years; Clara Putzki, age 65, Chicago service 42 years, during last 20 years 18 years; Emma M. Westerfield, age 66, service 45 years; Clara L. Wightman, age 66, service 41 years; Emma E. Ohde, age 67, service 43 years.

411 Exh. 2-a July 8, 1931 Page 14

The foregoing Report No. 30110 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

412 Exh. 2-b August 26, 1931 Page 168

(30306) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Thomas H. Furlong, age 69, service 31 years; Ida Jaeger, age 67, service 41 years; Effie M. Smith, age 67, service 38 years; Harriet H. Smith, age 65, service 31 years.

413 Exh. 2-c August 26, 1931 Page 182

The foregoing Report No. 30306 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, 7 yeas, no nays.

414 Exh. 2-d September 9, 1931 Page 261

(30439) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Blanche D. Abbott, age 65, Chicago service 21 years 9 months, outside 14 years; Jennie B. Caswell, age 68, Chicago service 32 years; Elizabeth A. Farrell, age 65, service 44 years; Margaret W. Kelly, age 67, service 47 years; Marcella Riley, age 65, service 40 years; Sadie M. Cooney, age 65, service 37 years.

415 Exh. 2-e September 9, 1931 Page 263

(G-30442) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Louise H. Kurz, age 65, service 27 years, during last 20 years, 16 years 9 months; Jennie E. Plumbe, age 65, service 31 years 8 months, during last 20 years, 18 years 9 months.

The foregoing Reports Nos. 30439 and G-30442 were on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

416 Exh. 2-f September 23, 1931 Page 300

(30537) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date as to Intervening Plaintiff Mary A. Chappel, age 65, service 25 years.

418 Exh. 2-g September 23, 1931 Page 305

The foregoing Report No. 30537 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

419 Exh. 2-h October 14, 1931 Page 357

(30664) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exhibit 1 (Rec. 370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiff Hattie C. Maxwell, age 67, service 47 years.

420 Exh. 2-i October 14, 1931 Page 363

The foregoing Report No. 30664 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

421 Exh. 2-j October 28, 1931 Page 413

(30785) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Mathilde Jaeger, age 69, service 39 years; Cora P. Tennery, age 65, service 37 years, during last 20 years, 16 years.

422 Exh. 2-k October 28, 1931 Page 416

The foregoing Report No. 30785 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

423 Exh. 2-l November 12, 1931 Page 465
(30976) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Grace P. Bixel, age 65, service 41 years; Myrtilla M. Mace, age 69, Chicago service 23 years, outside 14 years; Lillian M. Wilson, age 65, service 25 years.

424 Exh. 2-m November 12, 1931 Page 467

The foregoing Report No. 30976 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

425 Exh. 2-n November 25, 1931 Page 533
(31047) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement

and effective date as to Intervening Plaintiff Bertha Fontayne, age 69, service 49 years.

426 Exh. 2-o November 25, 1931 Page 537

The foregoing Report No. 31047 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

427 Exh. 2-p December 23, 1931 Page 626

(31242) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Amanda Isensee, age 65, service 31 years; Josephine M. McConville, age 69, service 45 years; Elizabeth M. McLean, age 67, Service 47 years; Katherine O'Grady, age 65, service 42 years 5 months, during last 20 years, 17 years 2 months; Effie A. Tinen, age 66, service 46 years.

428 Exh. 2-q December 23, 1931 Page 627

The foregoing Report No. 31242 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

428-a Exh. 2-r January 13, 1932 Page 666

(A-31316) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement

and effective date as to Intervening Plaintiff Katherine B. Fonvielle, age 68, service 37 years.

The foregoing Report No. A-31316 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

429 Exh. 2-s January 27, 1932 Page 692

(31384) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Jennie S. Allison, age 65, service 44 years; Cornelia Beardsley, age 66, service 45 years; Florence G. Daniel, age 65, service 32 years; Jacob H. Hauch, age 66, service 37 years; Jane H. O'Brien, age 68, service 47 years; Harriet B. Rogers, age 65, service 36 years, during last 20 years, 19 years.

430 Exh. 2-t January 27, 1932 Page 696

The foregoing Report No. 31384 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

431 Exh. 2-u February 10, 1932 Page 731

(31453) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates,

including Intervening Plaintiffs Nellie G. Hooker, age 66, service 31 years; Inez M. Oldham, age 65, service 34 years.

432 Exh. 2-v February 10, 1932 Page 732

The foregoing Report No. 31453 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

433 Exh. 2-w February 24, 1932 Page 787

(31501) Retirement of Teachers—Voluntary

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 296) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiff Sarah E. Gay, age 69, Chicago service 19 years, outside 17 years;

434 (Exh. 2-x February 24, 1932 Page 788)

John A. Peters, age 66, Chicago service 23 years, outside 12 years.

435 Exh. 2-y February 24, 1932 Page 789

The foregoing Report No. 31501 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

436 Exh. 2-z March 23, 1932 Page 1403

(31592) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Sue Gallaher, age 68, service 45 years; Katharine E. Mohrmann, age 65, service 45 years.

437 Exh. 2-aa March 23, 1932 Page 1404

The foregoing Report No. 31592 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

438 Exh. 2-bb April 27, 1932 Page 1481

(31695) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Sarah Baynes, age 67, service 44 years; Harriet L. Post, age 65, service 35 years.

439 Exh. 2-cc April 27, 1932 Page 1483

The foregoing Report No. 31695 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

440 Exh. 2-dd May 11, 1932 Page 1508

(31742) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 2 per-

sons named for such retirement and effective dates, including Intervening Plaintiffs Anna M. Cody, age 65, service 38 years; Margaret E. Rich, age 65, service 45 years.

441 Exh. 2-ee May 11, 1932 Page 1509

The foregoing Report No. 31742 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

442 Exh. 2-ff May 25, 1932 Page 1560.

(31771) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in substantially same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 2 persons named for such retirement and effective dates, including Intervening Plaintiff Marion L. Jones, age 65, service 45 years.

443 Exh. 2-gg May 25, 1932 Page 1561

The foregoing Report No. 31771 was on motion of Mr. English approved and adopted by vote on roll call, eleven yeas, no nays.

444-494 Plaintiffs' Exh. 3 to and including Exh. 3-vv

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444 Exh. 3 August 1, 1932 Page 62

(31939) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 11 persons named for such retirement and effective dates, including Intervening Plaintiffs Ella E. Earle, age 65, service 44 years; Angela M. Gerrity, age 67, service 36 years, during last 20 years, 19 years; Annie E. Goodyear, age 65, service 43 years; Caroline Hammerschmidt, age 69, service 40 years; Louise Joyce, age 65, service 38 years; Harriet C. Lapham, age 65, service 39 years; Emma L. Lee, age 65 years, service 25 years, 5 months; Elizabeth M. Manix, age 65, service 43 years; Ella M. Ottaway, age 65, service 37 years; Mary E. Twohig, age 69, service 50 years.

445 Exh. 3-a August 1, 1932 Page 67

The foregoing Report No. 31939 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

446 Exh. 3-b August 10, 1932 Page 96

(31977) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective date, including Intervening Plaintiffs

447 (Exh. 3-c August 10, 1932 Page 97)

Rose A. Beatty, age 65, service 41 years; Annie E. Dillon, age 68, service 46 years; Sarah Letitia Greene, age 67, service 36 years; Ada R. Thompson, age 69, service 39 years.

The foregoing Report No. 31977 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, six yeas, no nays.

448 Exh. 3-d September 7, 1932 Page 225

(32088) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 11 persons named for such retirement and effective dates, including Intervening Plaintiffs Carrie E. Armstrong, age 65, service 43 years; Martha J. Adams, age 67, service 45 years; M. Joyce Adams, age 69, service 28 years; Stella R. Cottrell, age 65, service 42 years; Katherine M. Keating, age 65, service 38 years; Agnes W. Keith, age 69, service 41 years; Evelyn M. Loucks, age 65, service 45 years; Minnie C. Reuter, age 66, service 44 years; Sellie H. Toole, age 65, service 48 years; Edith E. Snyder, age 65, service 29 years.

The foregoing Report No. 32088 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, six yeas, no nays.

450 Exh. 3-e September 14, 1932 Page 244

(32103) Voluntary Retirement of Teachers.

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective date, including Intervening Plaintiffs Bridget M. Dalton,

age 65, service 36 years; Mary F Gould (made an Intervening Plaintiff herein under her present name of Mary G. Pennington) age 67, service 48 years.

451 Exh. 3-f September 14, 1932 Page 245

The foregoing Report No. 32103 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

452 Exh. 3-g September 28, 1932 Page 273

(32147) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for each of the 2 persons named for such retirement and effective date, including Intervening Plaintiff Mary T. Adams, age 69, service 51 years.

453 Exh. 3-h September 28, 1932 Page 278

The foregoing Report No. 32147 was on motion of Mrs. Hefferan

454 (Exh. 3-i September 28, 1932 Page 279) approved and adopted by vote on roll call, seven yeas, no nays.

455 Exh. 3-j October 13, 1932 Page 291

(32183) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for retirement and effective date as to Intervening Plaintiff Marie L. Mann, age 65, service 47 years.

(32184) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth A. Keating, age 67, service 49 years; Emma B. Scudder, age 65, service 25 years; George Jackson Wagner, age 65, service 43 years.

456 Exh. 3-k October 13, 1932 Page 298

The foregoing Reports Nos. 32183 and 32184 were on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

457 Exh. 3-l October 26, 1932 Page 323

(32231) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth C. Fife, age 68, service 25 years, 9 months, during last 20 years, 18 years 7 months; C. Bertha Holt, age 68, service 25 years 9 months; Elizabeth McKillop, age 67, service 43 years; Maud Secrest, age 67, Chicago service 24 years 1 month, outside 17 years.

458 Exh. 3-m October 26, 1932 Page 325

The foregoing Report No. 32231 was on motion

459 (Exh. 3-n October 26, 1932 Page 326)

of Mr. Hemingway approved and adopted by vote on roll call, six yeas, no nays.

460 Exh. 3-o November 9, 1932 Page 342

(32264) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 9 persons named for such retirement and effective dates, including Intervening Plaintiffs Ida M. Brown, age 67, service 34 years; Annie S. Gauch, age 68, service 45 years; Nellie C. Goodnow, age 67, service 47 years; Anna J. Kerrigan, age 69, service 50 years; Margaret Mahony, age 69, service 46 years; Margaret Powell, age 69, service 36 years; Mary C. Scribner, age 68, service 33 years; Anna Straus, age 67, service 46 years; Margaret C. Young, age 65, service 37 years.

461 Exh. 3-p November 9, 1932 Page 344

The foregoing Report No. 32264 was on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

462 Exh. 3-q November 23, 1932 Page 379

(32312) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for her retirement and effective date as to Intervening Plaintiff Erin C. Miller, age 67, service 43 years.

463 Exh. 3-r November 23, 1932 Page 380

The foregoing Report No. 32312 was on motion of

464 (Exh. 3-s November 23, 1932 Page 381)

Mrs. Hefferan approved and adopted by vote on roll call, six yeas, no nays.

465 Exh. 3-t December 14, 1932 Page 421

(32384) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) her qualifications for retirement and effective date of the person therein named.

(32385) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 15 persons named for such retirement and effective dates, including Intervening Plaintiff Clara Belle Allen, age 68, service 40 years; Plaintiff Nellie C. Callahan, age 65, service 45 years; Intervening Plaintiffs Katharine M. Egan, age 66, service 42 years; Katherine Flaherty, age 68, service 36 years; Ellen W. Hansen, age 65, service 42 years; Walter J. Harrower, age 69, service 45 years;

466 (Exh. 3-u December 14, 1932 Page 422)

Sue B. Keller, age 65, service 41 years; Annie O'Brien, age 65, service 45 years; Jennie P. Sorenson, age 69, service 40 years; Gertrude M. Van Liew,

age 65, service 40 years; Effie E. Watson, age 65, service 36 years; Katherine E. Adams, age 69, service 49 years; Leonora R. Wilson, age 66, service 46 years; Lelia Purdy, age 68, Chicago service 18 years 9 months, outside 18 years.

467 Exh. 3-v December 14, 1932 Page 423

The foregoing Reports Nos. 32384 and 32385 were on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

468 Exh. 3-w December 28, 1932 Page 459

(32458) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for retirement and effective dates, including Intervening Plaintiffs Anna C. Bachman, age 65, service 36 years; Ella Cusick, age 68, Chicago service 17 years 8 months, outside 25 years; Minnie Euphrat, age 66, Chicago service 42 years; Antonia Lakay, age 68, service 48 years; Zaidee E. Mitchell, age 65, service 45 years; Mary F. Willard, age 65, service 39 years, during last 20 years, 16 years 9 months; Esther Meyer, age 65, service 47 years.

469 Exh. 3-x December 28, 1932 Page 463

The foregoing Report No. 32458 was on motion of

470 (Exh. 3-y December 28, 1932 Page 464)

Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

471 Exh. 3-z ◇ January 13, 1933 Page 500

(B-32509) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 9 persons named for such retirement and effective dates, including Intervening Plaintiffs Mary G. Hudson, age 65, service 44 years; Ernestine L. Kircher, age 65, service 34 years; Malinda Mann, age 69, service, Chicago 24 years, outside 18 years; Harriet Ostrom, age 66, Chicago service 17 years 4 months, outside 17 years; Mabel E. Smallwood, age 66, Chicago service 44 years; Mary Solberg, age 65, service 40 years; Ida Josephine Stewart, age 67, service 38 years; Agnes M. Watson, age 68, service 49 years; Anna Albertine Wetter, age 69, service 44 years.

472 Exh. 3-aa January 13, 1933 Page 501

(F-32509) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206), the qualifications for such retirement and effective date of the person named therein.

The foregoing Reports Nos. B-32509 and F-32509 were on motion of Mr. English approved and adopted by vote on roll call, six yeas, no nays.

473 Exh. 3-bb January 25, 1933 Page 520

(32536) Voluntary Retirement of Teacher

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date of the person named therein.

(32538) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 7 persons named for such retirement and effective dates, including Intervening Plaintiffs Clara M. Brown, age 69, service 49 years; Grace Church, age 67, service 46 years; Nellie J. Cook, age 66, Chicago service 23 years 4 months, outside 2 years; Mary Meythaler, age 66, Chicago service 34 years; Z. Anna Novotny, age 66, service 46 years; May E. Ryan, age 65, service 43 years.

474 Exh. 3-cc January 25, 1933 Page 522

The foregoing Reports Nos. 32536 and 32538 were on motion of Mr. Hemingway approved and adopted by vote on roll call, seven yeas, no nays.

475 Exh. 3-dd February 8, 1933 Page 967

(32603) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Mary A. Kenney, age 65, service 45 years; Margaret Huleatt, age 66, service 45 years.

The foregoing Report No. 32603 was on motion of Mr. English approved and adopted by vote on roll call, six yeas, no nays.

476 Exh. 3-ee February 23, 1933 Page 1000

(32635) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Margaret E. Reed, age 65, Chicago service 24 years, outside 9 years; Elizabeth Estella Sanborn, age 65, Chicago service 36 years.

477 Exh. 3-ff February 23, 1933 Page 1003

(D-32636) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications for retirement and effective date of the person named therein.

The foregoing Reports Nos. 32635 and D-32636 were on motion of Mr. English approved and adopted by vote on roll call, eight yeas, no nays.

478 Exh. 3-gg March 13, 1933 Page 1042

(32663) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for retirement and effective dates, including Intervening Plaintiffs Nettie M. Barry, age 65, service 42 years; Eleanor L. Hally, age 70, service 45 years; Margaret H. Mitsch, age 66, service 44 years; Arthur L. Penhallow, age 69, service 37 years.

479 Exh. 3-hh March 13, 1933 Page 1045

The foregoing Report No. 32663 was on motion of Mr. English approved and adopted by vote on roll call, seven yeas, no nays.

480 Exh. 3-ii March 22, 1933 Page 1059

(32809) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Louise A. Lyman, age 65, service 37 years; Helen B. Eastman, age 65, service 45 years; Catherine C. McLean, age 66, service 27 years.

481 Exh. 3-jj March 22, 1933 Page 1060

The foregoing Report No. 32682 was on motion of Mr. Caldwell approved and adopted by vote on roll call, eight yeas, no nays.

483 Exh. 3-kk April 12, 1933 Page 1208

(32717) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth D. Fox, age 65, service 32 years; Doris F. Kahn, age 65, service 39 years; Rachael A. Ringland, age 65, service 43 years.

484 Exh. 3-ll April 12, 1933 Page 1212

The foregoing Report No. 32717 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

485 Exh. 3-mm April 26, 1933 Page 1263

(32783). Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Byrnina B. Beardsley, age 65, service 33 years; Janie P. Deming, age 69, Chicago service 20 years, outside 26 years; Therese T. Dillon, age 67, Chicago service 39 years, during last 20 years, 17 years; Ada C. Dyson, age 67, service 27 years; Augusta Wines, age 65, service 33 years.

486 Exh. 3-nn April 26, 1933 Page 1264

The foregoing Report No. 32783 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

487 Exh. 3-oo May 10, 1933 Page 1284

(32809) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Auguste J. Forster,

age 68, service 49 years; Charles E. Linebarger, age 66, service 40 years; Mary Norton, age 65, service 26 years; Sarah G. Street, age 67, Chicago service 24 years 7 months, outside 6 years.

488 Exh. 3-pp May 10, 1933 Page 1285

The foregoing Report No. 32809 was on motion of Mr. English approved and adopted by vote on roll call, nine yeas, no nays.

489 Exh. 3-qq May 24, 1933 Page 1327

(32846) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 2 persons named for retirement and effective dates, including Intervening Plaintiffs Annie E. Daley, age 65, service 45 years; Berkeley J. Thomas, age 67, Chicago service 19 years 3 months, outside 7 years 5 months.

490 Exh. 3-rr May 24, 1933 Page 1328

The foregoing Report No. 32846 was on motion of

491 (Exh. 3-ss May 24, 1933 Page 1329)

Mrs. Hefferan approved and adopted by vote on roll call, eleven yeas, no nays.

492 Exh. 3-tt June 14, 1933 Page 1361

(32891) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 5 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna M. Andrus, age 68, service 32 years; Emma B. Campbell, age 65, service 32 years; Martha H. Dwyer, age 69, service 31 years; Elise Mendius, age 69, service 34 years; Kate Ward, age 69, service 38 years.

493 Exh. 3-uu June 14, 1933 Page 1363

The foregoing Report No. 32891 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

494 Exh. 3-vv June 28, 1933 Page 1394

(32943) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 9 persons named for such retirement and effective dates, including Intervening Plaintiffs Sarah McGill, age 65, service 37 years, during last 20 years 15 years 2 months; Dora Bell Neal, age 65, service 27 years; Evangeline V. Olson, age 65, service 25 years 3 months; Lena N. Olson, age 67, service 38 years; Florence M. Porter, age 65, service 27 years; Ferdinand J. Zipf, age 65, service 27 years.

The foregoing Report No. 32943 was on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

495-540 Plaintiffs' Exh. 4 to and including Exh. 4-rr.

(Photostatic copies of pages of printed proceedings of Board of Education.)

495 Exh. 4 August 9, 1933 Page 36

(33012) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Plaintiffs' Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 10 persons named for such retirement and effective dates, including Intervening Plaintiffs Edith M. Brogan, age 69, service 28 years; Mary E. Buckley, age 66, service 40 years; Elizabeth W. Deadman, age 65, service 39 years; Plaintiff Lillian F. Dougherty, age 68, service 44 years; Intervening Plaintiffs Minnie E. Gray, age 69, service 44 years; Lila M. Hopkins, age 65, service 37 years; Carrie A. Hughes, age 69, service 33 years; Lillian E. Kurtz, age 65, Chicago service 23 years, outside 16 years; Minda F. Letterman, age 66, Chicago service 45 years; James W. Parris, age 65, service 27 years.

496 Exh. 4-a August 9, 1933 Page 38

(B-33017) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 8 persons named for such retirement and effective dates, including Intervening Plaintiffs Eugenie F. Guth, age 68, service 49 years; Sarah A. Hennen, age 69, service 30 years; Winford D'A Keary, age 68, service 46 years; Mary I. McKeown, age 65, service 42 years;

497 (Exh. 4-b August 9, 1933 Page 39)

Allen M. Otwell, age 65, Chicago service 21 years 3 months, outside 13 years; Mary T. Schaefer, age 65, Chicago service 43 years; Plaintiff Laura Tierney, age 67, service 49 years.

The foregoing Reports Nos. 33012 and B-33017 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, eight yeas, no nays.

498 Exh. 4-c August 23, 1933 Page 116

(33056) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Alice L. Burns, age 68, service 47 years; Fannie T. Farrell, age 69, service 49 years; Plaintiff Nellie Tarpy Woulfe, age 65, service 33 years.

(33057) Voluntary Retirement of Teacher

Recommendation of Superintendent that in accordance with her written request, voluntary retirement of Mary I. McKeown voted to her in Report No. B-33017 (Rec. 496; Abst. 242) be rescinded.

The foregoing Reports Nos. 33056 and 33057 were on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

499 Exh. 4-d September 13, 1933 Page 149

(33104) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 18 persons named for such retirement and effective date, including Intervening Plaintiffs Miriam E. Bicknell, age 68, service 25 years; Edith H. Deal, age 66, service 47 years; E. Blanche Dickinson, age 65, service 37 years; Jennie M. Dignum, age 68, service 37 years; Helen V. Gibson, age 65, service 27 years; Harriet W. Grace, age 67, service 37 years; Alice Grove, age 65, service 33 years; Louise J. Klenze, age 65, service 26 years; Eliza M. Newman, age 65, service 35 years, during last 20 years, 19 years; Jane Black Okeson, age 69, service 50 years; Rebecca Okeson, age 65, service 36 years; Helen K. Phelps, age 69, service 34 years, during last 20 years, 19 years; Fannie S. Roberts, age 65, service 34 years, during last 20 years, 19 years; Julia R. Tolman, age 67, service 44 years, during last 20 years, 19 years; Jennie C. Towns, age 66, service 34 years; Ella M. Wallace, age 65, service 38 years; Jesse N. Westbrook, age 66, service 32 years.

500 Exh. 4-e September 13, 1933 Page 150

(A-33106) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective date, including Intervening Plaintiffs Nettie A. Chad-

wick, age 65, service 33 years; Mary R. Cleveland, age 66, service 35 years; Mary Jones, age 69, service 30 years.

501 Exh. 4-f September 13, 1933 Page 168

The foregoing Reports Nos. 33104 and A-33106 were on motion of Mr. Savage approved and adopted by vote on roll call, ten yeas, no nays.

502 Exh. 4-g September 27, 1933 Page 184

(33126) (33127) (33128) Each headed Voluntary Retirement of Teachers.

Each containing recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates in 33126, and of the 1 person named in each of Nos. 33127 and 33128, including Intervening Plaintiffs (33126) Mary E. Smith, age 65, service 27 years; Margaret M. Benson, age 65, service 29 years; also recommending that retirement of Intervening Plaintiff Jennie M. Dignum authorized by Report No. 33104 (Rec. 499; Abst. 244) be fixed at September 25, 1933 (on which she was retired at age 69) whereas at date of her retirement as provided in Report No. 33104 she would have been only 68; (33127) C. Lillian Greenleaf, age 70, service 30 years; (33128) Florence Healy, age 68, service 36 years.

503 Exh. 4-h September 27, 1933 Page 199

The foregoing Reports Nos. 33126, 33127 and 33128 were on motion of Mrs. Hefferan approved and adopted by vote on roll call, ten yeas, no nays.

504 Exh. 4-i October 11, 1933 Page 256

(33158) Retirement Report

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for voluntary retirement and effective dates, including Intervening Plaintiffs Sarah E. Ausemus, age 67, Chicago service 20 years, outside 12 years; Mary L. Burke, age 67, Chicago service 48 years;

505 (Exh. 4-j October 11, 1933 Page 257)

Lillian Farnam, age 69, service 36 years; Lillian K. Foley, age 65, service 30 years, during last 20 years, 19 years 6 months; William J. Goggin, age 67, service 39 years; Mary A. Hyands, age 67, service 27 years.

506 Exh. 4-k October 11, 1933 Page 258

The foregoing Report No. 33158 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

507 Exh. 4-l October 25, 1933 Page 275

(33184) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for retirement and effective dates, including Intervening Plaintiffs Charlotte Dutton, age

67, Chicago service 24 years 8 months, outside 14 years; Howard Howland, age 68, Chicago service 34 years; Helen M. Rathbun, age 67, service 43 years.

508 Exh. 4-m October 25, 1933 Page 277

The foregoing Report No. 33184 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

509 Exh. 4-n November 8, 1933 Page 295

(33219) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 2 persons named for such retirement and effective dates, including Intervening Plaintiffs Minnie M. Batterton, age 65, service 27 years; Joanna Stack, age 65, service 43 years.

510 Exh. 4-o November 8, 1933 Page 296

The foregoing No. 33219 was on motion of Mr. Buehler approved and adopted by vote on roll call,

511 (Exh. 4-p November 8, 1933 Page 297)

eight yeas, no nays.

512 Exh. 4-q November 22, 1933 Page 313

(33275) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Elizabeth M. Goodbody, age 65 service 37 years; Mary F. Flynn, age 65, service 43 years;

513 (Exh. 4-r November 22, 1933 Page 314)

Mary I. McKeown, age 65, service 42 years; Anna M. Stockbridge, age 69, Chicago service 24 years, outside 19 years; Josephine H. Erzinger, age 65, service 29 years, 4 months, during last 20 years, 16 years.

514 Exh. 4-s November 22, 1933 Page 316

The foregoing Report No. 33275 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

515 Exh. 4-t December 13, 1933 Page 349

(33325) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in

516 (Exh. 4-u December 13, 1933 Page 350)

Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 15 persons named for such retirement and effective dates, including intervening Plaintiffs Margaret Baker, age 70, Chicago service 21 years, outside 14 years; Susan M. Beaman, age 68, Chicago service 37 years; Robert J. Burger, age 65, service 35 years; Franklin C. Donecker, age 65, service 30 years, during last 20 years, 18 years 2

months; Walter E. Johnson, age 69, Chicago service 24 years 6 months, outside 11 years; Anna F. Loftus, age 69, Chicago service 43 years; Florence A. McCarthy, age 66, service 31 years, during last 20 years, 15 years 8 months; Katharine T. Murphy, age 67, service 48 years; Catherine A. Sullivan, age 67, service 42 years; Laura M. Truscott, age 67, Chicago service 19 years 4 months, outside 18 years; Fannie Williams, age 65, Chicago service 37 years; Martha Wilson, age 68, service 49 years.

517 Exh. 4-v December 13, 1933 Page 352

The foregoing Report No. 33325 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

519 Exh. 4-w December 27, 1933 Page 387

(33375) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs William Seabrook, age 66 service 38 years; Eleanor C. Smith, age 65, service 32 years.

520 Exh. 4-x December 27, 1933 Page 388

The foregoing Report No. 33375 was on motion of

521 (Exh. 4-y December 27, 1933 Page 389)

Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

522 Exh. 4-z January 24, 1934 Page 448

(33440) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 13 persons named for such retirement and effective dates, including Intervening Plaintiffs Anna S. Bishop, age 65, service 42 years; Jennie C. Chandler, age 65, service 37 years; Anna M. Cunningham, age 65, service 47 years; Fred C. Dunham, age 65, service 28 years;

523 (Exh. 4-aa January 24, 1934 Page 449)

Alice B. Ely, age 69, service 25 years, 9 months; Emma D. Knox, age 68, service 34 years; Agnes V. McIlhon, age 69, service 37 years; Frances I. McIlhon, age 67, service 37 years; Elmer L. Valentine, age 65, service 37 years; Emma A. Schreiner, age 65, service 45 years; Mabel Sykes, age 66, service 38 years; Mary Waters, age 66, service 34 years.

524 Exh. 4-bb January 24, 1934 Page 450

The foregoing Report No. 33440 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

525 Exh. 4-cc February 21, 1934 Page 481

(33469) Voluntary Retirement

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec.

370; Abst. 206) her qualifications for such retirement and effective date as to Intervening Plaintiff Elizabeth S. Bohman, age 66, service 30 years.

(33470) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 5 persons named for such retirement and effective dates, including Intervening Plaintiffs Annie E. Arnold, age 66, service 45 years; Jean W. Hubbard, age 70, service 25 years, 3 months; Ellen Pool, age 65, service 45 years; Mary Robson, age 65, service 35 years; Carrie A. Barracks, age 66, service 27 years.

526 Exh. 4-dd February 21, 1934 Page 483

The foregoing Reports Nos. 33469 and 33470 were on motion of Mr. Buehler approved and adopted by vote on roll call, seven yeas no nays.

527 Exh. 4-ee February 28, 1934 Page 522

(33518) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 4 persons named for such retirement and effective dates, including Intervening Plaintiffs Mary L. Hurley, age 68, service 46 years; Helen F. Roberts, age 67, service 41 years;

The foregoing Report No. 33518 was on motion of Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

528 Exh. 4-ff March 14, 1934 Page 578

(33575) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 6 persons named for such retirement and effective dates, including Intervening Plaintiffs Ida A. Bamberger, age 67, service 46 years; Elizabeth F. Daly, age 68, service 47 years; Nellie J. Hahn age 67, service 48 years; Edith Smalley, age 68, service 35 years; Edith Visger, age 68, service 46 years; Nora W. Walker, age 66, service 45 years.

529 Exh. 4-gg March 14, 1934 Page 579

The foregoing Report No. 33575 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

530 Exh. 4-hh April 11, 1934 Page 1173

(J-33640) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Nancy G. Gladish, age 65, service 34 years; Nettie L. Jones, age 65, service 41 years.

531 Exh. 4-ii April 11, 1934 Page 1175

The foregoing Report No. J-33640 was on motion of

532 (Exh. 4-jj April 11, 1934 Page 1176)

Mr. Buehler approved and adopted by vote on roll call, eight yeas, no nays.

533 Exh. 4-kk April 25, 1934 Page 1228

(33690) Voluntary Retirement of Teachers

Recommendations of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of the 3 persons named for such retirement and effective dates, including Intervening Plaintiffs Zella C. Baird, age 65, service 27 years; Bertha Kuntz, age 65, service 42 years; Jessie F. Williams, age 66, service 34 years.

534 Exh. 4-ll April 25, 1934 Page 1229

The foregoing Report No. 33690 was on motion of Mr. Buehler approved and adopted by vote on roll call, nine yeas, no nays.

535 Exh. 4-mm May 9, 1934 Page 1253

(33739) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh 1 (Rec. 370; Abst. 206) qualifications for such retirement and effective date of the person therein named.

536 Exh. 4-nn May 9, 1934 Page 1254

The foregoing Report No. 33739 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays.

537 Exh. 4-oo May 23, 1934 Page 1314

(33790) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) her qualifications for such retirement and effective date as to Intervening Plaintiff Elizabeth R. Rawson, age 65, service 32 years.

538 Exh. 4-pp May 23, 1934 Page 1320

The foregoing Report No. 33790 was on motion of Mr. Walker approved and adopted by vote on roll call, nine yeas, no nays.

539 Exh. 4-qq June 27, 1934 Page 1466

(33950) Voluntary Retirement of Teachers

Recommendation of Superintendent in same language and giving in same form as in Exh. 1 (Rec. 370; Abst. 206) qualifications of each of the 13 persons named for such retirement and effective dates, including Intervening Plaintiffs Almeda Bedwell, age 67, service 42 years; Bertha L. Bowen, age 66, service 25 years; Sara Frances Clinton, age 65, service 45 years; Anna E. Lancaster, age 65, service 40 years; Carrie E. Mathews, age 68, service 44 years; Jane A. Maloney, age 67, service 47 years; Ida M. Pahlman, age 68, service 50 years; Mary Josephine Parker, age 69, service 25 years 2 months; Hermine Schramm, age 65, service 39 years; Elizabeth Smith, age 65, Chicago service 20 years, outside 18 years; Kate O. Guenther, age 69, service 50 years.

540 Exh. 4-rr June 27, 1934 Page 1468

The foregoing Report No. 33950 was on motion of Mr. Buehler approved and adopted by vote on roll call, ten yeas, no nays,

542 (Whereupon the plaintiffs rested their case in chief.)

543 Mr. Righeimer: I would like to proceed in support of the motion which was made by the City in which we join to strike the bill.

Mr. Carter: I still think that motion is not before us here.

The Court: Objection overruled. I permitted counsel to file his motion to strike this Answer after an argument was heard, and I shall let the defendant at this time go back to the original Bill on the same kind of a motion.

Mr. Carter: Of course, part of the ground is that we never had any notice they were going to do such a thing until today. They did say they would do it a week ago but I expected them to do it before now if they were going to.

Mr. Righeimer: It is the position of the Board that this Bill should be dismissed for the following reasons: First, because the plaintiffs are in the wrong forum; Second, if they have not sought the proper remedy they should seek it if such a remedy is available in a suit of like character, involving the precise questions which are involved in determining questions arising out of this Bill; Third, it is our position, in any event, this action here is predicated upon a bill which sets up no equity.

544 As to the wrong remedy, I want to call attention to admissions made in argument advanced by Mr. Carter and right along the line of this evidence here.

He says, in effect, that the placing of the teachers on this so-called pension, the retired list, is a mere ministerial act and we agree with him on that.

If the law requires it to be done, we have no discretion in the matter.

I take it there is no contention that the Legislature had not a right to pass the original Miller Law and no contention that it did not have a right to pass an amendment to the Miller Law.

The Court: The Board's contention here is that they were obliged to do what they have done because of the amendment to the Miller Law passed in June 1935? The Board says it has complied with that Law.

Mr. Righeimer: And we have no discretion.

The Court: They pass that law and it has no discretion. I do not understand how the plaintiffs will mandamus the Board to comply with the original Law when there has been an amendment of that law and the Board is complying with that amendment.

Mr. Righeimer: By setting up that the Miller Law, as they set up in this case—of course, he has two strings to his bow, but disregarding one of the strings, he says that this amendment to the Miller Act passed in 1935 is void.

The Court. Unconstitutional.

Mr. Righeimer: Yes. Therefore, the law which governs the rights of his clients is the law before the amendment was introduced.

545 It always gets around in a circle, as to whether there are vested rights and whether these rights are being taken away and if they are being taken away, which is the proper form to dispose of it.

The Court: Well, that point would go to the constitutionality of this amendment.

Your alibi, if you will pardon the term alibi, your reason for what you have done is the amendment to the Miller Law.

Mr. Righeimer: Just exactly.

The Court: Passed or enacted in 1935. According to the authorities Mr. Carter in his argument cited weren't there decisions—I made notes of them. Personally, I think the authorities there say that a pension, purely a pension was not a vested right.

Mr. Carter: That is, while they are still in the active service. But that once they are out in the retired status—

The Court: Then there is some authority for that?

Mr. Carter: Yes.

Mr. Righeimer: If your Honor determines this pension is not a vested right, as I think you must under the decisions which we shall read to you, that
546 then he leaves his clients in a position where he has got to say we did not administer the law properly by giving them $500 a year—that they should have all

of $1500. Or it puts them in a position where there is no provision whatever for them, where they are not even entitled to $500.

Wednesday, December 18, 1935.

Mr. Carter: Plaintiffs Burns, Reynolds and Paterson applied for voluntary retirement in June, 1935, and at the meeting of the Board of June 26, 1935, it was referred to the General Committee. After the new act became effective in July they were compulsorily retired. Counsel for the Board conceded in argument that they did not have any discretion, that it was a mere ministerial act.

Mr. Righeimer: All we deny is the custom—we concede it is a ministerial act.

Mr. Carter: Now, if your Honor please, we have these exhibits which we offered in evidence yesterday, or will have them. That the year 1930-1931
547 shall be marked Plaintiffs' Exhibit 1; 1931-1932 will be Plaintiffs' Exhibit 2; 1932-1933 will be Plaintiffs' Exhibit 3; 1933-1934 will be Plaintiffs' Exhibit 4; 1934-1935 will be Plaintiffs' Exhibit 5. I will hand those in tomorrow.

The Court: I won't shut out either of you gentlemen to get your record complete, because this is important to all parties concerned, of such importance that it is better to take a little time and have it all in.

Mr. Carter: I will present the order on that tomorrow and I will bring these exhibits in at the same time.

The Court: Yes.

(Which was all of the evidence offered, received or adduced and all the proceedings had on the hearing of above motion.)

Monday, February 24, 1935

Present: Alfred R. Bates, for Plaintiffs; Frank S. Righeimer, Ralph Condee, Frank Schneberger, for Defendants.

The Court: Gentlemen, I am ready to pass on this suit for an injunction.

One Chester C. Dodge, on behalf of himself and many teachers of the Chicago Board of Education, instituted this injunction suit against the Board of Education to restrain the Board from complying with a new—with an amended statute to the old Miller Law, which provided for certain pensions to be paid for teachers under certain conditions.

The amendment was in reducing the amount of
548 pension, under those circumstances and conditions, to teachers. The plaintiffs' contention here is that if this amendment applies to the plaintiffs the amendment is unconstitutional.

There was also a contention urged by the plaintiffs that this amendment did not apply to the teachers.

The contention of the defense was that the remedy should have been in mandamus rather than injunction. It was also a contention of the defense that the pension right is not a vested right; it is a creature of the Legislature and therefore can be regulated, modified or amended by the Legislature.

I listened to the arguments,—very intelligent, enlightening, complete arguments,—by both sides in this case, which consumed several afternoons. On the completion of the oral argument both sides submitted very complete, elaborate briefs, and reply briefs.

The Court has considered fully the importance of this litigation to all parties to the suit, and gave attentive ear to the arguments and studied assiduously and carefully the briefs and reply briefs submitted by counsel at the conclusion of their arguments. The Court has had this under advisement for some time because of the importance of this litigation to all parties concerned.

The contention of the defense that this is not a proper remedy the Court is inclined to believe contains some merit. At this time, however, the Court is not passing on that proposition.

It was also a contention of the defense that the suit now pending in the Circuit Court of Cook County, in which another teacher is plaintiff, includes the same proposition as involved in the suit before me. At this time the Court is not going to pass upon that proposition. As I say, there is some merit in the contention of the defense that this suit should have been a suit for mandamus rather than a suit for injunction.

The Court is going to pass on this case from the main issue involved,—I may say the meat of this controversy.

549 I am satisfied that a pension right is not a vested right. It is a creature of the Legislature. I am of

the opinion that it can be modified, changed, or altered by the Legislature, and the judgment of the Court will be, in this injunction suit, that the injunction is denied and the bill dismissed for want of equity.

Draft your order along that line, gentlemen.

Now gentlemen, I will not add to that order from what I have said here. I have given this a great deal of consideration and I have made my statement very brief, and that will be the form of my order,—so it won't be necessary to draft a very lengthy order. I think that covers the whole situation in a nutshell.

Mr. Bates: There is one thing I should like to point out. Since we filed the last intervening petition there have been eight others who want to be joined. They have not yet been joined and I don't know whether, under the circumstances, they will join. I would like to have an opportunity to consult Mr. Carter on that. It doesn't take very long by air mail.

Mr. Righeimer: Whoever might come in, they would be people represented by some individuals of the class to which any other persons may belong, and the facts are the same, and it has always been the policy of the Board,—always will continue to be the policy of the Board—that regardless of the parties to the litigation, if there are any rights which affect any parties in any particular class, which have been adjudicated one way or another, even those not in the litigation would certainly have the benefit of the litigation. A public body could

not afford to do any other thing and survive. As the Court has announced its decision, we should like to draw up an order which substantially conforms to what the Court has said.

The Court: I cannot see any great rush, Judge. You draft your order and submit it to Mr. Bates and he can take it up by air mail with Mr. Carter. You can get that thing back in a week, can't you?

And give the counsel on the other side a chance
550 to look it over.

Make it March 3d. A week from tomorrow.

There will be no argument,—just for the submitting of that order.

(Which was all the evidence offered, received or adduced and all the proceedings had on the trial of said cause.)

551 As matters and things hereinabove set forth do not fully appear of record, the Plaintiffs tender this as their "Report of the Proceedings at the Trial" and pray same may be signed and sealed by the Judge pursuant to statute, which is accordingly done this 24th day of March, 1935.

(Signed) Harry B. Miller,
Judge of the Superior Court.

Presented March 12, 1936.

552 Stipulation that original Report of Proceedings may be used in making up transcript of record and may be incorporated in said transcript upon any appeal of said cause.

553 Stipulation that original exhibits offered in evidence in case may be incorporated in the Proceedings at the Trial in lieu of copies thereof.

555 Certificate of Clerk of Superior Court to perfect and complete transcript of record (except original Report of Proceedings which is by stipulation incorporated herein and made a part hereof) in said cause.

ALLAN J. CARTER,
Attorney for Appellants.

ALFRED R. BATES,
C. T. B. GOODSPEED,
Of Counsel.

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IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER OF SUBMISSION—June 16, 1936

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellants hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Allan J. Carter for appellants and by Frank S. Righeimer for appellee is here submitted for the consideration and judgment of the Court.

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

IN SUPREME COURT OF ILLINOIS

June Term, A. D. 1936

Number 23661. Agenda 24

CHESTER C. DODGE et al., Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO et al., Appellees

Appeal from Superior Court, Cook County

OPINION—Filed October 27, 1936

Mr. Justice STONE delivered the opinion of the court:

Appellants' bill filed in the Superior Court of Cook County seeking to enjoin appellees, Board of Education of the City of Chicago and others, from reducing teachers'

pensions as applied to them, was dismissed for want of equity. They bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

The original complaint was filed by twenty plaintiffs as a class suit on behalf of themselves and all others similarly situated. The Board of Education of the City of Chicago and certain of its officers and the City of Chicago and certain of its officers were made defendants. The act which is made the basis of this complaint is commonly known, and is hereinafter referred to, as the "Miller Act". It is an act having to do with teachers' pensions (Smith-Hurd Revised Stat. 1927, Section 614a, Chap. 122, par. 614a, p. 2586). The complaint of the appellants is that by the revision of that act in 1935 vested rights of those teachers who had retired or sought to do so, prior to the enactment of such revision, were taken away. These appellants all have either retired or sought to retire before the 1935 amendment of the Miller Act. The only provision of that amendment here attacked has to do with the reduction of pensions provided by the act.

This act was originally passed in 1926 and entitled: "An Act to provide for compulsory retirement of teachers, etc., and the payment of retirement annuities." The Act provides a pension in addition to that provided by the Teachers' Pension Act of 1909. As originally enacted, the Teachers' Pension Act provided for voluntary retirement of teachers. The Miller Act provided for compulsory retirement of teachers at the age of 70 and for the payment of retirement annuities of $1500 per annum. This was a separate act and in nowise affected the Teachers' Pension Law which provided a pension of $1,000 per year on voluntary retirement. The additional annuities, under the Miller Act, are paid solely out of funds raised by taxation. Teachers contribute nothing toward that fund.

In 1927 the Miller Act was amended to fix, by Section 3, the annuities on a sliding scale from $1,000 to $1,500 to teachers voluntarily retiring between the ages of 65 and 70. This, to teachers retiring under 70, was a reduction from the flat amount of $1,500 given by the original act.

By the amendment, effective on July 12, 1935, the title of the act was amended to read as follows: "An Act to amend sections 1 and 2 and the title of 'An Act to provide

for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents and for the voluntary retirement of superintendents of schools and members of the Board of Examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said Act." (Session Laws of 1935, p. 1378.) This amended act abolished the provisions for voluntary retirement and fixed the compulsory retirement age at 65 years. The annuities were reduced to a flat rate of $500 annually. A very large number of former teachers have joined in this proceeding as did some who sought to retire in May and June 1935, under the Miller Act, before the enactment of the 1935 amendment.

Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that, if the 1935 amendment is to be construed as the Superior court construed it, it is in violation of Section 2 Article XIV of the Constitution of Illinois and the Fifth Amendment of the Federal Constitution and in violation of Section 10, Article I of that Constitution, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts. The prayer of the bill is that the Board and its appropriate officers be required to take the necessary action to permit requests for voluntary retirement, under the law in force at the time the requests were made for such, and that it take such action as necessary to restore the annuities then in force. The City of Chicago filed a motion to dismiss the complaint on the ground of want of equity. The Board of Education answered denying the complainant's right to the relief sought. Many teachers and former teachers intervened.

As is stated by counsel for appellants in their reply brief, "'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire, made application for retirement.'' This question will be first considered. They cite DeWolf v. Bowley, 355 Ill. 530; Proter

v. Loehr, 332 Id. 353; Beutel v. Foreman, 288 Id. 106; People v. Abbott, 274 Id. 380; Hughes v. Traeger, 264 Id. 612 and Pennie v. Reis, 132 U. S. 464, 33 Law Ed. 426, in support of this claim.

The case of DeWolf v. Bowley, supra, did not involve the question of vested property rights but announced the oft-repeated doctrine under which pensions to retired officers are sustained, i. e., that a public benefit accrues in two ways, by encouraging such officers or employees to remain in the service and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. The opinion in that case reviews decisions of this and other courts.

Porter v. Loehr, supra, concerned an amendment to the Police Pension Act which increased the pension of retired police officers and applied such increased pensions to those who had retired under the previous act. The act was held unconstitutional for the reason that the increase of pensions to retired policemen did not contemplate the rendition of any additional service by the pensioners and the amount of their pensions was fixed by law when they retired, and had their sole basis in services rendered prior to retirement. This was the ground upon which the invalidity of the act was held and not, as counsel for appellants argue, because of retroactive application of such amendment.

Beutel v. Foreman, supra, was a mandamus proceeding to compel the Board administering the Police Pension Fund Act to grant a pension. Beutel retired after 20 years of service as a member of the police force and filed an application for pension. About three months after filing this application the act was amended adding the requirement that the retired officer shall also have reached the age of 50 years. Beutel had not reached that age and the Board denied his petition. The act prior to the amendment of July, 1917, had no 50-year requirement. It was argued that Beutel had a vested right in a pension when on March 31, 1917, he retired and made application for such pension and that the legislature could not take away that right by subsequent legislation imposing another requirement. It was argued that the amendment was unconstitutional as violating the property right vested in him. It was there held that Beutel enjoyed no right which could not be altered by the legislature.

A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the state induces amendment or repeal, such individuals have no cause to complain. People v. Clark, 283 Ill. 221; 1 Lewis on Statutory Construction, 2nd ed., Sec. 284. It was held in the Beutel case that municipalities may take away the right to pensions under circumstances shown in that record, without affecting the contract right of pensioners or violating the constitution. Counsel for appellants say that the doctrine of the Beutel case is to be applied only to facts on that record, which showed that no right in the retiring officer had become vested, while here the rights of these retired teachers had become vested before the amendment of 1935. We are unable to see the lack of analogy on the facts. In that case Beutel had complied with the statute as it existed at the time he retired but it was changed before the Board acted on his application for pension. The opinion in that case discusses the authorities fully and need not be re-examined here. We adhere to the holding there made. None of the cases cited by counsel for appellants have modified the principles laid down in the Beutel case. The decisions of this court have uniformly been that pensions are not based on contract, but are mere expectancies based upon anticipated continuance of existing law and that future installments of pensions are not vested property rights. It follows that the state may reduce future installments of pensions without violating the provisions of the State or Federal constitution.

Counsel for appellants argue that if an amendment may not be made retroactive to include increased pensions to those who had retired before such increase was authorized, then by the same token the legislature should not be permitted to reduce pensions by the retroactive application of such amendatory statute, and they call attention to what they deem an analogy in logic between this case and Porter v. Loehr, supra. It will be observed however that the basis of the holding in the Porter case was not that the amendatory act could not be made retroactive but the reason for the invalidity of that act as applied to Porter was that an increase of pension to those retiring before such increase

was authorized, was not in contemplation of services to be rendered nor an inducement to continue service but was a gratuity, and so came within constitutional inhibition.

Appellants' counsel also say that Miner v. Stafford, 326 Ill. 204, supports their contention that this act should not be construed to be retroactive in its application. In that case petitioner's husband was killed some six months before an amendment to the Pension Act increasing pensions to widows of policemen who were killed in service was enacted. It was held that her right to a pension was one given by the act as it existed at the time the right to receive a pension accrued and not by the amendment. While the opinion refers to the fact that nothing is said in the amendatory act showing an intention to give it retroactive application, yet the basis of the opinion was that her right to a pension arose before the amendment was enacted. As is pointed out in Porter v. Loehr, supra, to give a pension act of that character retroactive effect would be to violate the constitutional prohibition against donation of public funds for private interests.

In this case the 1935 amendment of the Miller Act by specific reference repealed Section 3, which fixed the amount of the retirement annuities, leaving nothing in the act other than the provision for $500 per annum to authorize the payment of those annuities. It would be difficult to conceive of stronger evidence of legislative intent to make the amendment retroactive in its application.

In Hughes v. Traeger, supra, it was held that a change in the disposition of a fund, a portion of which was contributed from public taxation and a portion from the salaries of employees, does not violate any vested rights of those interested therein, since such right, until it accrues, is only in the nature of an expectancy created by law and which the law may revoke or destroy. Counsel argue that this case is authority for their claim of vested right because of the language of the opinion: "Until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law", and that in this case the happening of the event designated by the statute was the retirement of teachers under the provisions of the Miller Act. The doctrine, as we have seen, is thoroughly established in this state, that the state may control the giving or taking away of pensions,

and, in consideration of such expressions as "happening of contingency" this doctrine must be borne in mind. If there became due to any of these appellants any installment under the Act prior to the amendment of 1935, which was not paid, they would have a cause of action to recover it, for until a statute is amended the processes of the law are afforded those who are beneficiaries under it. It is not intimated in this case that there are any such unpaid installments.

Pennie v. Reis, supra, relied upon by appellants, arose in California. In 1878 a statute was adopted in that state providing that upon death of a police officer after June 1, 1878, there should be paid to his legal representatives, out of a pension fund established by the act, the sum of $1,000. The act required contributions to the fund and provided that in case a policeman resigned he should be repaid the amounts he had contributed. On March 4, 1889, a new pension law was enacted providing for the merger of certain pension funds and repealing the statute under the terms of which $1,000 was to be paid to a deceased policeman's estate. This amendment occurred just nine days before the death of the policeman whose representatives were seeking the award. It was contended there, as here, that the Act of 1889 violated constitutional provisions against the impairment of the obligation of contract and destroyed vested rights. It was held that this was not so. The court there said that "until the particular event should happen upon which the money or part of it was to be paid there was no vested right in the officer to such payment. His interest in the fund was until then a mere expectancy created by law and liable to be revoked or destroyed by the same authority."

The difference in nature between a lump sum pension or award and a continued pension is obvious, and is sufficient to mark the difference in the rule with reference to interest therein as found in the decisions of the courts. Under a statute such as the one in Pennie v. Reis, supra, where, on the happening of a certain event, a certain sum of money became due, the interest of the beneficiary when such event takes place is analogous to the interest of a pensioner whose installment or pension has become due under the terms of a Pension act. Pannie v. Reis, supra, does not, in any way, militate against the rule generally adopted that pension acts

do not create in their beneficiaries a vested interest in future installments of the pensions created thereby.

Counsel for appellants seek to draw a distinction between the payment of a pension and the payment of an annuity as affecting the question of a vested right therein. The Miller Act uses the term "annuity". Counsel say that even though this court has held that pensioners have no vested right in future installments of pensions, yet there is a sufficient difference between a pension and an annuity to justify their position that appellants have a vested right in such annuity. They say that annuities are in the nature of compensation for services theretofore rendered for which compensation has been withheld. We are unable to see the distinction. The plan of payment is the same, the purposes are evidently the same and the use of the term "annuity" instead of "pension"—which is but an annuity—does not seem to us to result in the distinction for which counsel for appellants contend. Moreover it may be observed that counsel's contention that these payments are annuities of compensation withheld for services rendered if of force, would endanger the entire act, since Section 19, Article IV, of the Constitution prohibits the granting or authorizing of extra compensation, fee or allowance to any public officer or contractor after service has been rendered or contract made.

Counsel for appellants also argue that under Section 4 of the statute on Statutes (Sec. 4, Chap. 131, Smith Hurd Stat. 1935, p. 3140), the amendment to the Miller Act should be construed as retaining provisions for those teachers who retired before the amendment. Said Section 4 provides that "no new law shall be construed to repeal a former law as to * * * any right accrued or claim arising under the former law * * * before the new law takes effect." This statute can be of no avail unless the right of appellants to this pension is a vested right. In addition it may be observed that the Miller Act of 1935 is a complete act within itself revising the old Miller Act. There is therefore no room for the application of Section 4 of the statute on Statutes.

We are of the opinion that the Superior Court did not err in dismissing appellants' bill. The decree is therefore affirmed.

Decree affirmed.

IN SUPREME COURT OF ILLINOIS

No. 23661

CHESTER C. DODGE et al., Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO et al., Appellees

Appeal from Superior Court Cook

JUDGMENT—October 27, 1936

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here that neither in the record and proceedings aforesaid nor in the rendition of the decree aforesaid is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the decree of the Superior Court aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellees recover of and from the said appellants costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Adam F. Bloch, Clerk of the Supreme Court of the State of Illinois and Keeper of records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the Seal of the said Supreme Court, in Springfield, in said State, this 4th day of February, in the year of our Lord one thousand nine hundred and thirty-seven.

Adam F. Bloch, Clerk of the Supreme Court. (Seal of the Supreme Court, State of Illinois.)

IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING REHEARING—December 4, 1936

Now on this day the Court having duly considered petition for rehearing filed herein and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL AND ASSIGNMENTS OF ERROR—Filed January 19, 1937

To the Honorable the Supreme Court of the United States:

Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, and nine hundred forty-two others respectfully pray an appeal to this Court from the final decision of the Supreme Court of Illinois in the above-entitled cause. That Court filed its opinion October 27, 1936. A petition for rehearing was duly filed which, after consideration, was denied by that Court on December 4, 1936.

This case is one in which is drawn into question the validity of a statute of the State of Illinois, to wit, an Act effective July 12, 1935 (Laws of Illinois 1935, page 1378), hereinafter referred to as the amended Miller Act, upon the ground that the said statute is repugnant to Section 10, Article I, of the Constitution of the United States, and is also repugnant to the Fourteenth Amendment to the Constitution of the United States.

The final decision of the Supreme Court of Illinois, which court is the highest court of said State in which a decision in the above-entitled cause could he had, and the court of last resort in all cases arising in the State of Illinois, is in favor of the validity of said statute.

Therefore, in accordance with Rule 46, Paragraph 2, of the Rules of the Supreme Court of the United States (28 U. S. C. A.) appellants respectfully show that this case is

one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. 54), as amended by the Act of April 26, 1928 (45 Stat. 466), was passed, to-wit, under Sec. 237 (a) of the Judicial Code (28 U. S. C. A., Sec. 344), a review can be had in the Supreme Court of the United States on appeal.

Appellants feel themselves aggrieved by the final judgment and decision of the Supreme Court of Illinois and respectfully pray that an appeal be allowed to the Supreme Court of the United States and that an order be entered fixing the amount of the cost bond.

Appellants present the following assignments of error:

1. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not violate Section 10, Article I, of the Constitution of the United States as impairing the obligations of contracts.

2. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not violate the Fourteenth Amendment to the Constitution of the United States as taking property without due process of law.

3. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not deprive appellants of vested contract rights in violation of Section 10, Article I, of the Constitution of the United States.

4. The Supreme Court of Illinois erred in holding that the 1935 Amendments to the Miller Act as applied to appellants did not deprive appellants of vested and accrued property rights in violation of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of Illinois erred in refusing to hold, as contended by appellants, that as applied to them the 1935 Amendments to the Miller Act were unconstitutional and void in reducing petitioners' annuities because in violation of Section 10, Article I, of the Constitution of the United States.

6. The Supreme Court of Illinois erred in refusing to hold, as contended by appellants, that as applied to them the 1935 Amendments to the Miller Act were unconstitu-

tional and void in reducing petitioners' annuities because in violation of the Fourteenth Amendment to the Constitution of the United States.

7. The Supreme Court of Illinois erred in affirming the decision of the trial court dismissing appellants' complaint for want of equity.

Appellants respectfully pray that because of the foregoing errors the judgment of the Supreme Court of Illinois, dated October 27, 1936, which on the denial on December 4, 1936 of appellants' petition for rehearing became final as of October 27, 1936, be reversed and a judgment entered in favor of appellants with costs of suit.

Respectfully submitted, Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, and the 941 other Appellants, by Allan J. Carter, Their Attorney. Alfred R. Bates, C. T. B. Goodspeed, Karl D. Loos, Preston B. Kavanagh, of Counsel.

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 19, 1937

The appellants in the above entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Illinois on the 27th day of October, 1936, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Illinois in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of Illinois

shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $250.00. And now such bond is presented and approved by me.

Dated January 18, 1937.

Lott R. Herrick, Chief Justice of the Supreme Court of the State of Illinois.

[File endorsement omitted.]

Bond on appeal for $250.00, approved and filed Jan. 19, 1987, omitted in printing.

Citation, in usual form, showing service on Richard S. Folsom and Barnet Hodes, filed January 20, 1937, omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed February 4, 1937

It is hereby stipulated by and between the parties hereto, by their respective counsel, without prejudice to appellees' motion, to dismiss this appeal, or in the alternative to affirm the judgment of the Supreme Court of Illinois, and to its full consideration by the Supreme Court of the United States, that there shall be included in the transcript of the record in above entitled cause to be forwarded to the Clerk of the United States Supreme Court for use in the appeal to that Court which has heretofore been allowed by the Chief Justice of the Supreme Court of Illinois, the following:

1. Abstract of Record filed in the Supreme Court of Illinois in said cause by Chester C. Dodge et al., appellants in that Court;

2. Opinion of the Supreme Court of Illinois in the final decision of that Court as handed down on December 4, 1936;

3. Judgment entered in the Supreme Court of Illinois confirming the judgment of the Superior Court of Cook County, Illinois;

4. Petition for Appeal to the Supreme Court of the United States, including Assignments of Error, presented to the Chief Justice of the Supreme Court of the State of Illinois on January 18, 1937;

5. Jurisdictional Statement under Rule 12 of the Rules of the Supreme Court of the United States, also presented to the Chief Justice of the Supreme Court of Illinois on January 18, 1937;

6. Order entered January 18, 1937, by the Honorable Lott R. Herrick, Chief Justice of the Supreme Court of Illinois allowing appeal, fixing amount of bond, and approving the same;

7. Cost Bond approved by the Honorable Lott R. Herrick, Chief Justice of the Supreme Court of Illinois, on January 18, 1937;

8. Citation to Appellees issued by the Chief Justice of the Supreme Court of Illinois, together with acknowledgment of service of same upon appellees;

9. Notice served by appellants upon appellees as to allowance of appeal and that copies are therewith served upon appellees of said Petition for Appeal, including Assignments of Error, of said Jurisdictional Statement under Rule 12 of the Rules of the Supreme Court of the United States, and of said Order allowing appeal, which said Notice was given under Paragraph 2 of Rule 12 of the Rules of the Supreme Court of the United States and contained a statement directing attention of Appellees to the provisions of paragraph 3 of said Rule 12, together with acknowledgment of service by appellees of said Notice and of the copies of the documents as therein set forth;

10. Statement by appellees of matters and grounds making against the jurisdiction of the Supreme Court of the United States;

11. Motion of appellees to dismiss this appeal or affirm the decision of the Supreme Court of Illinois;

12. Notice served by appellees upon Appellants pursuant to Rule 12 paragraph 3 of the Rules of the United States Supreme Court as to the filing by appellees with the Clerk

of the Supreme Court of Illinois, appellees' statement of matters and grounds making against the jurisdiction of the Supreme Court of the United States, and motion by appellees to dismiss the appeal, or in the alternative to affirm the judgment of the Supreme Court of the State of Illinois, together with acknowledgment of service by appellants of said notice and of the copies of the documents therein and above set forth.

13. This stipulation designating portions of the record to be included in the transcript.

Allan J. Carter, Attorney for Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, et al., Appellants. Richard S. Folsom, Frank S. Righeimes, Attorneys for Board of Education et al., Appellees. Barnet Hodes, Attorney for City of Chicago et al., Appellees.

Dated February 2, 1937.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

Certificate of transmittal omitted in printing.

IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANTS AND DESIGNATION OF THE PARTS OF RECORD TO BE PRINTED—Filed February 9, 1937

Come now the appellants and adopt their Assignments of Error set forth in their Petition for Appeal filed herein, as their statement of the points to be relied upon. Appellants represent that the whole of the Record, as filed in this Court, is necessary for the consideration of the case.

Allan J. Carter, Attorney for Chester C. Dodge et al., Appellants.

Received a copy of the foregoing Statement of Points and Designation of Record, this 8th day of February, 1937.

Richard S. Folsom, Attorney for Board of Education of the City of Chicago; James B. McCahey; Ernest Buehler; Irwin Walker; Paul Drymalski; Charles W. Fry; Joseph P. Savage; William D. McJunkin; Harry W. Solomon; Joseph J. Salat; William H. Bied; Mrs. W. S. Hefferan; Frank H. Landmesser; Harry H. Brackett. Barnet Hodes, Jr., Attorney for City of Chicago; Edward J. Kelly; Gustave A. Brand and Robert Upham.

[File endorsement omitted.]

Endorsed on cover: File No. 41,253. Illinois, Supreme Court. Term No. 713. Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, et al., appellants, vs. Board of Education of the City of Chicago et al. Filed February 5, 1937. Term No. 713, O. T., 1936.

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